

GREENSPOON MARDER LLP
BETH-ANN KRIMSKY (*pro hac vice admission*)
beth-ann.krimsky@gmlaw.com
LAWREN A. ZANN (*pro hac vice admission*)
lawren.zann@gmlaw.com
200 East Broward Blvd., Suite 1800
Fort Lauderdale, FL 33301
Telephone: 954.527.2427
Facsimile: 954.333.4027

NOSSAMAN LLP
JAMES H. VORHIS (SBN 245034)
jvorhis@nossaman.com
50 California Street, 34th Floor
San Francisco, CA 94111
Telephone: 415.398.3600
Facsimile: 415.398.2438

Attorneys for Defendant TOTAL MERCHANT SERVICES, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ABANTE ROOTER AND PLUMBING, INC, a
California corporation, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

TOTAL MERCHANT SERVICES, LLC., a
Delaware limited liability company,

Defendant.

Case No: 3:19-cv-05711-EMC

**DECLARATION OF LAWREN A. ZANN
IN SUPPORT OF RESPONSE IN
OPPOSITION TO MOTION FOR CLASS
CERTIFICATION**

Date: June 10, 2021

Time: 1:30 p.m.

Location: Courtroom 5, 17th Floor

Date Action Filed: September 11, 2019

1 I, Lawren A. Zann, declare as follows:

2 1. I am a partner at Greenspoon Marder LLP and an attorney of record for Defendant
3 Total Merchant Services, LLC (“TMS”) in the above-captioned matter. I am over the age of 18
4 and can competently testify to the matters set forth herein if called to do so.

5 2. On or about February 12, 2021, Jason Heil, as a corporate representative of non-
6 party Triumph Merchant Solutions, LLC (“Triumph”), appeared at a deposition and provided
7 testimony on behalf of Triumph in the foregoing matter. Excerpts of Mr. Heil’s deposition are
8 attached hereto as Exhibit B.

9 3. On or about February 24, 2021, Darren McCaffrey, as a corporate representative
10 of TMS, appeared at deposition and provided testimony on behalf of TMS in the foregoing
11 matter. Excerpts of Mr. McCaffrey’s deposition are attached hereto as Exhibit C.

12 4. On or about March 3, 2021, Fred Heidarpour, as a corporate representative of
13 Plaintiff Abante Rooter and Plumbing, Inc., appeared at deposition and provided testimony on
14 behalf of Plaintiff in the foregoing matter. Excerpts of Mr. Heidarpour’s deposition are attached
15 hereto as Exhibit D.

16 5. On or about February 5, 2020, Plaintiff responded to TMS’s First Set of Requests
17 for Production and produced documents Bates labelled ABANTE000001 through
18 ABANTE000476 in the foregoing matter. Plaintiff’s production Bates labeled ABANTE000001
19 is attached hereto as Exhibit E. Plaintiff’s production Bates labeled ABANTE000419 through
20 ABANTE000428 is attached hereto as Exhibit F.

21 I declare under the penalty of perjury under the laws of the United States of America
22 that the foregoing is true and correct. Executed on May 10, 2021, in Fort Lauderdale, Florida.

23
24 /s/ Lawren A. Zann
Lawren A. Zann

EXHIBIT B

Jason Heil - February 12, 2021

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
CASE NO. 3:19-CV-05711-EMC

ABANTE ROOTER AND PLUMBING,)
INC., individually and on)
behalf of all others)
similarly situated,)

Plaintiff,)

vs.)

TOTAL MERCHANT SERVICES, LLC,)
a Delaware limited liability)
company,)

Defendants.)

DEPOSITION OF JASON HEIL
TAKEN ON BEHALF OF THE PLAINTIFF
VIA VIDEOCONFERENCE
ON FEBRUARY 12, 2021
11:00 AM - 3:35 PM (CST)

Jason Heil - February 12, 2021

1 * * A P P E A R A N C E S * *

2 ON BEHALF OF THE PLAINTIFF:

3 TAYLOR T. SMITH
PATRICK H. PELUSO
WOODROW, PELUSO
4 3900 East Mexico Avenue
Suite 300
5 Denver, Colorado 80210
(720) 907-7628
6 tsmith@woodrowpeluso.com
ppeluso@woodrowpeluso.com
7 (Via teleconference)

8

9 ON BEHALF OF THE DEFENDANT:

10 (Total Merchant Services, LLC)
LAWREN A. ZANN
GREENSPOON, MARDER
200 East Broward Boulevard
11 Suite 1800
Fort Lauderdale, Florida 33301
12 (954) 333-4345
lawren.zann@gmlaw.com
13 (Via teleconference)

14

15 ON BEHALF OF TRIUMPH MERCHANT SOLUTIONS, LLC:

16 BRANDON M. SMITH
LAW OFFICES OF BRANDON M. SMITH
105 West F Street
3rd Floor
17 San Diego, California 92101
(619) 236-8344
18 brandonsmith@brandonsmithlaw.com
(Via teleconference)

19

20

21 REPORTED BY:

JOHN Q. MARTIN, II
22 CSR #1940

23

24

25

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Jason Heil - February 12, 2021

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Jason Heil - February 12, 2021

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1 MR. ZANN: Can you establish for him the dates
2 of the phone calls that are in question that Triumph
3 made. I don't know if the deponent has that
4 information off the top of his head.

5 MR. T. SMITH: Sure. I believe the calling
6 centered between November of 2018 and I believe it was
7 July of 2020.

8 MR. ZANN: Do you understand the question,
9 Jason?

10 THE WITNESS: No. What's the question?

11 BY MR. T. SMITH:

12 Q. The question is: Did you own any other
13 businesses between November of 2018 and July of 2020?

14 A. Yes.

15 Q. And what were those businesses?

16 A. Redial.

17 Q. Can you spell that?

18 A. R-E-D-I-A-L.

19 Q. Is that an LLC corporation?

20 A. LLC.

21 Q. Any other businesses?

22 A. No.

23 Q. Okay. Is Total Merchant Supplies and Triumph
24 related in any way?

25 A. No.

1 Q. You said "you want to say." Is it possible
2 there was someone else?

3 A. Correct.

4 Q. Who would that be?

5 A. Nathaniel Aripez.

6 Q. But he would no longer be with Triumph?

7 A. That's correct.

8 Q. Do you have a job title with Triumph?

9 A. No.

10 Q. Just owner?

11 A. Yeah.

12 Q. What does Triumph do?

13 A. Sell merchant services.

14 Q. Is that all they do?

15 A. Correct.

16 Q. And are all the merchant services on behalf of
17 Total Merchant?

18 A. No.

19 Q. Okay. Who are they on behalf of?

20 A. Various merchant service providers that
21 provide great deals.

22 Q. Okay. Do you know how many?

23 A. I think we have about four or five different
24 relationships.

25 Q. Is that currently or throughout your

1 A. I don't sell merchant services anymore.

2 Q. Okay. Do you know when your relationship with
3 Total Merchant would have ended?

4 A. It hasn't ended.

5 Q. So, it's ongoing?

6 MR. ZANN: Object to the form.

7 THE WITNESS: Correct.

8 BY MR. T. SMITH:

9 Q. So, what do you currently do with Total
10 Merchant?

11 A. Currently? I'm sorry, can you --

12 Q. You don't sell credit card processing anymore,
13 is that what you said?

14 A. Right, correct.

15 Q. When did that stop?

16 A. Maybe two years ago. I mean, it's not a
17 focus.

18 Q. So, it's not your main job?

19 A. Correct.

20 Q. But Triumph is still operational?

21 A. With one employee.

22 Q. Is that one employee selling credit card
23 processing systems?

24 A. More so maintaining accounts because we get
25 customers calling in, but -- yeah.

1 MR. B. SMITH: I'll join.

2 MR. ZANN: Do you understand the question,
3 Jason? If you understand it, answer.

4 THE WITNESS: Can you repeat it, please.

5 BY MR. T. SMITH:

6 Q. Yeah. How would you describe your business
7 relationship with Total Merchant, Triumph's business
8 relationship?

9 MR. ZANN: Form.

10 THE WITNESS: I think it's okay, it's good.

11 BY MR. T. SMITH:

12 Q. What does Triumph do for Total Merchant?

13 A. Triumph would, if signed a deal that would fit
14 the parameters of Total Merchant, then we would send
15 it to Total Merchant.

16 Q. What do you mean by "a deal?"

17 A. A company that was interested in getting set
18 up for credit card processing for lower rates, free
19 equipment, things along that nature.

20 Q. Okay. So, you would seek out potential
21 merchants to sell credit card processing, is that a
22 fair characterization of Triumph's business?

23 MR. ZANN: Object to the form, misstates
24 testimony.

25

1 Q. What is it?

2 A. It would be a portal provided by the merchant
3 service providers we have if they had it, and if they
4 didn't we faxed or e-mailed papers to the clients.

5 Q. Okay. Did Total Merchant have a system that
6 you would use?

7 A. Correct, they did have a system.

8 Q. What was that system?

9 A. I'm sorry, it's been a while. I'm sorry, it's
10 not on top of my head.

11 Q. Okay. So, what happened after you would
12 submit the application?

13 A. We would wait for it to be approved. And if
14 it was approved then we would get it approved and they
15 would receive their equipment. And if it wasn't
16 approved then we would take it somewhere else to get
17 it approved.

18 Q. Okay. Would Triumph have any conversations
19 with Total Merchant --

20 A. I'm sorry, excuse me one second. My son is
21 taking out the dogs.

22 (Off the record)

23 BY MR. T. SMITH:

24 Q. Throughout the sales process did Triumph have
25 any communication with Total Merchant?

1 A. Throughout the sales process?

2 Q. Yes.

3 MR. B. SMITH: Object to the form.

4 THE WITNESS: No.

5 BY MR. T. SMITH:

6 Q. I'm sorry, I didn't get that. Did you say
7 no?

8 A. Correct, I said no.

9 Q. So, Triumph's communication with Total
10 Merchant would be just related to the approval of the
11 application?

12 A. Correct.

13 Q. And how would you find out if they were
14 approved?

15 A. Through the portal mentioned.

16 Q. And then what would happen?

17 A. Send out equipment and encouraged the people
18 to plug in the credit card processing machine.

19 Q. Does Triumph send the equipment or does Total
20 Merchant send it?

21 A. It gets tricky, it depends. I can send out
22 the equipment sometimes or they can send out the
23 equipment. But in this case they sent out the
24 equipment.

25 Q. When you say "in this case" what are you

1 charger for my laptop.

2 Q. Sure.

3 (Off the record 12:44 p.m.)

4 (Back on the record at 12:46 p.m.)

5 BY MR. T. SMITH:

6 Q. Did Total Merchant provide Triumph any
7 training in sales?

8 A. No.

9 Q. Did Total Merchant provide Triumph any
10 in-person training?

11 A. No.

12 Q. Did Total Merchant ever have, to your
13 knowledge, any seminars, gatherings or meetings for
14 their ISO's or agents?

15 MR. B. SMITH: Object to the form.

16 THE WITNESS: To my knowledge, no. I don't
17 pay attention to their newsletters.

18 BY MR. T. SMITH:

19 Q. It's possible they may have.

20 Did Total Merchant provide any training,
21 anything related to telemarketing?

22 A. I can't recall.

23 Q. Did Total Merchant provide any sales leads?

24 A. No.

25 Q. Did Total Merchant provide any training

1 regarding the Telephone Consumer Protection Act?

2 A. No, I don't believe so.

3 Q. Has Total Merchant provided any marketing
4 materials?

5 A. I can't recall.

6 Q. Did Total Merchant permit you to use their
7 name in marketing materials?

8 A. If we were to sell their services or if we
9 were to send someone to their portfolio, then we would
10 let them know that we were sending them to Total
11 Merchant Supplies.

12 Q. But you wouldn't have used Total Merchant's
13 name in marketing?

14 A. No. We use merchant services in our opening.

15 Q. Okay. Does Total Merchant restrict how you
16 can market?

17 A. I don't know.

18 Q. How does Total Merchant compensate you?

19 A. Shared residual and upfront bonuses.

20 Q. Can you explain those? Start with the upfront
21 bonuses, how does that work?

22 A. Like a hundred or two hundred dollars for any
23 equipment that we would sign up, depending on the
24 equipment, obviously.

25 Q. Okay.

1 MR. B. SMITH: Object to the form.

2 THE WITNESS: Like the splits or the payments
3 or the buy rates?

4 BY MR. T. SMITH:

5 Q. Yeah, any term.

6 A. Yeah. I'm saying the splits and buy rates.

7 Q. The splits and buy rates. And what are
8 those?

9 A. How we get paid.

10 Q. It appears that this is a sales representation
11 agreement between Total Merchant and Total Merchant
12 Supplies, is that correct?

13 A. Yes.

14 Q. Is this related to Triumph in any way?

15 A. No.

16 Q. Is Total Merchant Supplies related to Triumph
17 in any way?

18 A. No.

19 Q. Is Total Merchant Supplies still ongoing?

20 A. No.

21 Q. It's not. Do you know when that ended?

22 A. 2018-ish, '17-ish.

23 Q. And why did that end?

24 A. A falling out with current partners.

25 Q. And then after that you started Triumph?

1 A. Correct.

2 Q. Did Triumph take over Total Merchant Supplies
3 contract with Total Merchant?

4 A. No. Separate agreement.

5 Q. So, it would have had a separate agreement
6 that looks like this?

7 A. I believe so.

8 Q. Did Total Merchant Supplies solicit sales on
9 behalf of Total Merchant?

10 A. Correct.

11 Q. Do you know if Total Merchant Supplies
12 terminated their relationship with Total Merchant?

13 MR. B. SMITH: Object to form.

14 THE WITNESS: I don't know what they did.

15 BY MR. T. SMITH:

16 Q. In 2008, after the falling out, did Total
17 Merchant Supplies close completely?

18 A. Correct.

19 Q. So, it doesn't exist at all anymore?

20 A. Correct.

21 Q. What happened with the accounts with Total
22 Merchant that were managed by Total Merchant
23 Supplies?

24 A. What do you mean?

25 Q. Well, you told me that if you make a sale then

1 you continue to get residual income for the processing
2 of credit cards that each of these clients does,
3 correct?

4 A. Correct.

5 Q. So, in 2018 what happened to all those
6 clients, did they close their accounts with Total
7 Merchant?

8 MR. ZANN: That's a misstatement of his
9 testimony, he said 2017 or '18.

10 THE WITNESS: No, I don't believe they closed,
11 no.

12 BY MR. T. SMITH:

13 Q. Are they still ongoing?

14 A. A lot of them fell off. I don't know.
15 There's still some ongoing, but I don't know how many
16 there are.

17 Q. Okay. Were any of the accounts that were sold
18 by Total Merchant Supplies be now maintained by
19 Triumph?

20 MR. B. SMITH: Objection.

21 THE WITNESS: No, not by Triumph.

22 BY MR. T. SMITH:

23 Q. Who would they be managed by?

24 MR. B. SMITH: Objection, form.

25 THE WITNESS: They would just -- they are not

1 BY MR. T. SMITH:

2 Q. And what are those?

3 A. I can't recall.

4 Q. Did they have any involvement in your
5 day-to-day operations?

6 A. I'm sorry?

7 Q. Did they have any involvement in your
8 day-to-day operations?

9 A. No.

10 Q. When you submit an application for approval
11 to Total Merchant does Total Merchant ever ask for
12 information about the source of the sale?

13 A. No.

14 Q. Does Total Merchant limit the territory in
15 which you're allowed to sell in?

16 A. No.

17 Q. Would they put any pressure on you to make a
18 certain number of sales in a year?

19 A. No.

20 Q. As it relates to your calling practices during
21 the time the calls were made, which was November of
22 2018 to July of 2020, did Total Merchant require you
23 to maintain a do not call list?

24 MR. ZANN: Objection, foundation.

25 THE WITNESS: I'm sorry, can you repeat that

1 BY MR. T. SMITH:

2 Q. Would that dialer be a Vicidial system?

3 A. Vicidial, yes.

4 Q. Who would be the telephone service provider
5 associated with any calls you made to the Vicidial
6 system?

7 A. What do you mean?

8 Q. Let me rephrase that. Between November of
9 2018 and July of 2020 Triumph utilized the Vicidial
10 system, is that correct?

11 A. Correct.

12 Q. Is that the only system that Triumph would
13 have utilized during that timeframe?

14 A. Correct.

15 Q. And when you place a call was there a
16 telephone service provider you would go through, such
17 as AT & T, Verizon, something like that?

18 A. Yes.

19 Q. Do you know who it is?

20 A. VoIP Innovations.

21 Q. You said you first started working with
22 Poundteam in 2014, is that correct?

23 A. Yes.

24 Q. So, at the start of that Poundteam would have
25 an agreement with Total Merchant Supplies, correct?

1 Q. Do you remember about how long Triumph has
2 utilized Infofree services?

3 A. For a while. I can't -- I'm sorry, Taylor, I
4 can't give you an exact date, but --

5 Q. Can you ballpark it?

6 A. For a long time.

7 Q. Did you have an agreement with Infofree?

8 A. No.

9 Q. No contract?

10 A. Not that I recall. I can't remember.

11 Q. Did Triumph purchase leads from Infofree?

12 A. Yeah.

13 Q. Do you remember how much Triumph paid for
14 those leads?

15 A. No.

16 Q. Would any records of payments be within
17 Triumph's possession?

18 A. I don't know.

19 Q. Does Triumph still obtain leads from Infofree?

20 A. No.

21 Q. Do you remember how Triumph would go about
22 obtaining leads from Infofree?

23 A. What do you mean?

24 Q. Like, how did you get leads, how were they
25 obtained?

1 A. They would have it in their website. You
2 click businesses and then you would click, like, the
3 industry, for example, and then download.

4 Q. And then what would happen?

5 A. You'd receive businesses, registered
6 businesses and their phone numbers.

7 Q. Okay. And how would you receive it, would
8 they be Excel file?

9 A. Yeah, Excel, CSV.

10 Q. What would Triumph do with the list they
11 obtained from Infofree?

12 A. Triumph would then take the list and upload it
13 into the system to call.

14 Q. When you say the system are you referring to
15 Triumph's dialing system?

16 A. I'm referring to Vicidial.

17 Q. Does Triumph keep records of all of the leads
18 they have obtained from Infofree?

19 A. Correct.

20 Q. Where would those be maintained?

21 A. Inside VT's system, the cloud, whatever it is.

22 Q. Nowhere else?

23 A. No. I mean, when it's downloaded, right, you
24 have it, but I've erased those files, just to be
25 clear.

1 A. I believe so.

2 Q. I want to direct your attention to line 239,
3 495.

4 A. Uh-huh.

5 Q. Do you see in column H the telephone number
6 925-828-1080, do you see that?

7 A. Yes, yes.

8 Q. I'll represent that that's plaintiff's
9 telephone number.

10 A. The guy you're representing?

11 Q. Correct. Is it fair to say that a call was
12 placed on that date to that telephone number, my
13 client?

14 A. Yes.

15 MR. ZANN: Object to the form.

16 THE WITNESS: Yes.

17 BY MR. T. SMITH:

18 Q. And that would have been June 24th, 2019?

19 A. If that's what it says, yes.

20 Q. And I'll direct your attention to row 351,361.
21 Do you see in column H where it says 925-828-1080?

22 A. Yes.

23 Q. And the dates associated with that entry would
24 be October 8th, 2019, correct?

25 A. Yes.

1 place them on the DNC.

2 Q. By asking "do not contact me," would that be
3 sufficient for Triumph to place them on the DNC list?

4 A. Correct. We would not be calling.

5 MR. T. SMITH: Let's take a brief break and
6 then I'll have just a few more questions. Five
7 minutes.

8 (Off the record at 2:50 p.m.)

9 (Back on the record at 2:54 p.m.)

10 BY MR. T. SMITH:

11 Q. Previously we discussed Infofree and I believe
12 you testified that Triumph found Infofree by searching
13 on-line, is that correct?

14 A. Yes.

15 Q. Did Triumph ever have any communications with
16 Total Merchant regarding Infofree?

17 A. Any communications, what do you mean by that?

18 Q. Any e-mails, phone calls, did Total Merchant
19 ever have a conversation regarding related to
20 Infofree?

21 A. I can't recall at the moment, no.

22 Q. Did Total Merchant make Triumph aware of
23 Infofree?

24 A. No. I don't believe so, no.

25 Q. Did Total Merchant purchase any leads from

1 Infofree for use by Triumph?

2 A. I'm sorry? One more time.

3 Q. Did Total Merchant purchase any leads for use
4 by Triumph through Infofree?

5 A. Gosh. I honestly can't recall. I can't
6 recall at the moment.

7 Q. Do you recall if Total Merchant ever mentioned
8 in any way Infofree to Triumph?

9 MR. ZANN: Asked and answered.

10 THE WITNESS: No, I'm sorry, I don't remember
11 every conversation I've had with them. It's been a
12 few years. I'm sorry. I can't recall it.

13 BY MR. T. SMITH:

14 Q. How does Triumph maintain records of e-mails?

15 A. We use Microsoft on-line.

16 Q. Does Triumph periodically delete e-mails?

17 A. I mean, yeah, junk mail, right.

18 Q. Does Triumph delete e-mails like from Total
19 Merchant?

20 A. No.

21 Q. Would Triumph have every e-mail they ever
22 received?

23 A. I mean, I don't know. I don't know how
24 Microsoft on-line is, but I have the basic package
25 from Microsoft on-line.

1 A. Fair.

2 Q. So, do you recall a line of testimony earlier
3 in today's deposition where you named Harbor Touch,
4 Elavon, First Data and High Risk for other credit
5 card processing companies you worked with, you being
6 Triumph?

7 A. Yes.

8 Q. And you indicated at the time that you weren't
9 certain if that was a complete list or not, is that
10 correct?

11 A. That is correct.

12 Q. So, the possibility -- again, I know anything
13 is possible, in your words -- but based on that
14 testimony, does the possibility exist that there are
15 more than those four entities I just named, as well
16 as TMS, that Triumph worked with between July 2018 and
17 July 2020?

18 A. Yeah, absolutely.

19 Q. And if you recall -- actually, Taylor, I'm
20 going to ask you if you can try, can you pull up,
21 let's go with Exhibit 9, which is the 2019 call data.

22 MR. T. SMITH: Sure.

23 BY MR. ZANN:

24 Q. And while he's pulling that up, Jason, the
25 question I'm going to have when that pulls up, is

1 there any way you can identify on that call data
2 which one of any of those five entities we just named
3 Triumph placed calls on behalf of?

4 A. No.

5 Q. And I suppose -- I mean, I won't ask any
6 further questions in that regard, that was pretty
7 definitive. But I'm going to ask you what some of
8 these things mean. I think I know what they mean,
9 but I'm going to ask you to clarify for me what it
10 means.

11 If we start in column A you'll see row one,
12 unique ID?

13 A. Uh-huh.

14 Q. What does that mean to you?

15 A. What does it mean to me? That it's a unique
16 ID for that individual record.

17 Q. So, you see how rows 1 and 2 share the same
18 unique ID?

19 A. Yes, I see that now, yes.

20 Q. Do you know why that is?

21 A. No, I do not know why that is.

22 Q. Okay. So, is it a fair statement, as you sit
23 here today, you're not certain what column unique ID
24 means?

25 A. Yeah, other than how it sounds.

1 merchant on the other hand?

2 MR. T. SMITH: Objection, calls for
3 speculation.

4 THE WITNESS: When the deal is executed. When
5 I close the deal. When we get a deal, and I'm not
6 closing the deal, it's obviously one of the agents,
7 they would close it and then they would place it
8 wherever they saw fit at the time of the conversation
9 for the client.

10 BY MR. ZANN:

11 Q. Let's just elaborate on that a little bit
12 more, just the process itself. This is the process
13 I'm envisioning and you tell me if I'm correct or
14 clarify where I'm wrong. Is that fair?

15 A. Fair.

16 Q. A call will be placed by Triumph to a
17 merchant?

18 A. Correct.

19 Q. I believe you indicated Triumph would identify
20 itself as, quote, unquote, merchant services?

21 A. Correct.

22 Q. And Triumph would then inquire into the needs
23 of the merchant? And by needs I'm referring to
24 credit card processing needs of the merchant.

25 A. Right, yeah.

1 Q. In the course of that communication did
2 Triumph determine which one of any of those five
3 entities we discussed earlier could provide the most
4 cost effective services to the merchant?

5 A. Correct.

6 Q. So, ultimately it's Triumph's decision as to
7 which credit card processing company to place the
8 merchant with, is that correct?

9 A. Right.

10 Q. And I believe you stated earlier, for merchant
11 applications submitted to TMS, if those were rejected
12 you would attempt to submit those to one of those
13 other credit card processors to provide the service to
14 the merchant?

15 A. Yeah.

16 Q. Would that also work in the reverse, wherein
17 if Triumph would submit --

18 A. Correct.

19 MR. B. SMITH: Jason, wait for him to finish
20 his question.

21 THE WITNESS: Sorry, sorry.

22 BY MR. ZANN:

23 Q. I know you know where I'm going. I've just
24 got to put it on there for the record.

25 Would that also work in reverse, where if

1 Triumph submitted a merchant application to one of
2 the other credit card processors, non Total Merchant
3 credit card processors it was affiliated with at the
4 time, if that was rejected would Triumph then submit
5 that application to TMS to see if TMS would accept
6 it?

7 A. Correct.

8 Q. Is there anything in that, I'll call it
9 solicitation process that needs clarification?

10 A. For me?

11 Q. In terms of the process as I've laid out, am
12 I correct in the description that I've provided?

13 A. Yeah, that's a fair statement.

14 Q. You indicated earlier that Poundteam
15 constructed the Vicidial software on a server that
16 Triumph currently possesses, is that correct?

17 A. Currently now, yes.

18 Q. Currently now, right.

19 A. Correct.

20 Q. You indicated that the telephone service
21 provider for the Vicidial software was VoIP
22 Innovations, is that correct?

23 A. Correct.

24 Q. Do you know what VoIP is?

25 A. It's voice over IP, it's just the way we're

1 talking right now.

2 Q. I don't mean to paint you as an expert, so if
3 you don't know --

4 A. I'm not an expert. I'm far from one.

5 Q. Fair enough. Then I'll forgo the questions I
6 have about VoIP for you. I'll let experts deal with
7 that if they need to.

8 A. Okay.

9 Q. You indicated that the numbers in the Vici
10 dialing system were numbers that Triumph uploaded
11 from Infofree, is that correct?

12 A. Correct.

13 Q. Was there a situation where Triumph would
14 manually input numbers into the Vici dialing system?

15 A. What do you mean by manually input?

16 Q. Sure. So, how about in the situation where
17 Triumph obtains a merchant, an application is
18 approved by any one of the credit card processing
19 companies that Triumph works with during that time
20 period, would Triumph glue that merchant's telephone
21 number in the Vici dialing system so it could place
22 calls in the future to that merchant?

23 A. I don't understand the question. I'm going to
24 assume that if we made contact with somebody and they
25 gave us another phone number, correct?

1 Q. Right.

2 A. And then we take that phone number and put it
3 in our system to call them?

4 Q. That's my question to you, would you do that?

5 A. Yes, we would do that. That happens all the
6 time.

7 Q. I was speaking over you. That's my fault.
8 Did you say that does or does not happen all the
9 time?

10 A. No, that does happen. People do request that.

11 Q. So, if we were to look at the call data that
12 you have produced that we were just discussing with
13 all those columns, are you aware of any indication in
14 that call data of what is a number obtained through
15 Infofree as opposed to the situation we just
16 described, when the merchant provides a different
17 number?

18 A. No.

19 Q. Okay.

20 A. I can't differentiate it, no.

21 Q. Okay. Do you know, by you I'm referring to
22 Triumph, does Triumph actually know the contact
23 information for the plaintiff in this case, Abante
24 Rooter and Plumbing?

25 A. Do I know his contact?

1 A. Yeah.

2 Q. So, it's not a situation where Triumph would
3 inquire into goods or services or the amounts of goods
4 or services these call recipients performed, is that
5 correct?

6 A. Correct.

7 Q. Your relationship with TMS -- and I think it's
8 apparent, but I would like to you clarify -- your
9 relationship with TMS was not exclusive, is that
10 correct?

11 A. Yeah.

12 Q. And Triumph was free to conduct business with
13 any other credit card processing entity out there?

14 A. Correct. I mean, that's how the industry
15 works.

16 Q. Sure. And as it relates to the compensation,
17 did Total Merchant compensate Triumph on an hourly
18 basis?

19 A. No.

20 Q. And was that compensation based upon merch and
21 applications accepted by Total Merchant?

22 A. Accepted and approved, correct.

23 Q. And along those same lines, did Total Merchant
24 impose a quota upon Triumph concerning the total
25 number of merchants that need to be contacted?

1 place telephone calls on behalf of Triumph?

2 A. No.

3 Q. Okay. And the same thing with third parties,
4 did Triumph engage any third parties to place
5 telephone calls between that November 2018 and July
6 2020 time period?

7 MR. T. SMITH: Objection, asked and answered.

8 THE WITNESS: Not to my knowledge, not what I
9 remember.

10 BY MR. ZANN:

11 Q. So, as far as Triumph is aware, all of the
12 calls Triumph placed were placed by its own employees?

13 A. Correct.

14 Q. Okay. Did TMS provide any benefits to Triumph
15 employees?

16 A. Did Total Merchant Services provide benefits
17 to us? No, no, they did not.

18 Q. And similarly, did Total Merchant Services pay
19 the salaries of any Triumph employees?

20 A. No.

21 Q. Did Total Merchant pay the rent of Triumph?

22 A. No. They didn't pay for anything.

23 Q. And I'll kind of walk you through that a
24 little bit further. Did they pay for the Vicidial
25 software system?

1 A. No.

2 Q. Did they pay for the servers that are
3 currently housed in Tijuana?

4 A. No.

5 Q. Did they pay for any office equipment that was
6 used by Triumph?

7 A. No.

8 Q. And you've already indicated that they did not
9 provide the leads, so I can cross that off my list.
10 Is that correct?

11 A. I'm sorry?

12 Q. I said, was that correct?

13 A. Your question? You were just going off.

14 Q. Did TMS provide any leads to Triumph?

15 A. No.

16 Q. Did TMS at any point in time direct Triumph to
17 disregard any contractual obligations Triumph had?

18 A. What do you mean?

19 Q. To ignore whatever your contractual
20 obligations were?

21 A. With who?

22 Q. Between Triumph and TMS.

23 A. No. They didn't tell me to ignore, no.

24 Q. Did TMS control when Triumph placed telephone
25 calls?

1 A. Did TMS control when we placed phone calls,
2 no.

3 Q. The actual timing as to the placement of phone
4 calls?

5 A. No.

6 Q. Okay. Does TMS have a shared bank account
7 with Triumph?

8 A. No.

9 Q. Can TMS hire employees for Triumph?

10 A. No.

11 Q. Fire Triumph employees?

12 A. No.

13 Q. And I believe you indicated earlier that TMS
14 did not provide training as it relates to
15 telemarketing?

16 A. No, they did not.

17 Q. So, I guess that follows TMS did not train
18 any Triumph employees as it relates to the TCBA?

19 A. No.

20 Q. The Vicidial platform that we've discussed,
21 was that platform also used to place calls on behalf
22 of those other four credit card processing entities
23 Triumph is aware of working with?

24 A. Yeah.

25 Q. And the leads obtained from Infofree, were

1 those leads also used to place calls to any one of
2 those four non TMS credit card processing companies we
3 discussed earlier?

4 A. Repeat the question.

5 Q. Sure. I'm just taking it one step earlier.
6 You agree that the leads Triumph contacted were
7 obtained through Infofree, correct?

8 A. Correct.

9 Q. You just told me that Triumph used the same
10 Vici dialing platform to contact merchants related to
11 any of those other four credit card processing
12 companies Triumph worked with, correct?

13 A. Correct.

14 Q. I'm curious to know as it relates to the leads
15 obtained from Infofree if the same holds true,
16 meaning, were those leads also used for any one of
17 those other four credit card processing entities?

18 A. The other vendors, yeah, those leads were used
19 for them as well.

20 Q. Okay. The point being that the same software
21 and the same leads used to place calls were not
22 exclusive to Total Merchant, is that correct?

23 A. That is correct.

24 Q. Jason, I don't think I have anything else for
25 you. You clarified what I needed to clarify.

EXHIBIT C

Darren McCaffrey - February 25, 2021

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ABANTE ROOTER AND PLUMBING,
INC., individually and on
behalf of all others similarly
situated,

CONFIDENTIAL

Plaintiff,

Hon. Edward M. Chen

vs

Case No. 3:19-cv-05711-EMC

TOTAL MERCHANT SERVICES, LLC, a
Delaware limited liability company,

Defendant.

/

Deposition of DARREN McCAFFREY, taken in
the above-entitled matter before Notary Public, Patricia
A. Lutza, CSR, CRR, by Zoom Virtual Video Conference, on
Thursday, February 25, 2021, commencing at about 12:00
p.m.

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1 APPEARANCES:

2
3 PATRICK H. PELUSO, ESQ.

4 Woodrow & Peluso, LLC

5 3900 East Mexico Avenue

6 Suite 300

7 Denver, Colorado 80210

8 (720) 213-9676

9 ppeluso@woodrowpeluso.com

10
11 Appearing on Behalf of the Plaintiff.

12
13 LAWREN A. ZANN, ESQ.

14 Greenspoon Marder, LLP

15 200 East Broward Boulevard

16 Suite 1800

17 Fort Lauderdale, Florida 33301

18 (954) 333-4345

19 lawren.zann@gmlaw.com

20
21 Appearing on Behalf of the Defendant.

1 APPEARANCES: (continued)

2

3 EARL JOHNSON, ESQ.

4 Total Merchant Services

5 250 Stephenson Highway

6 Troy, Michigan 48083

7 earljohnson@nabarcad.com

8

9

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Darren McCaffrey - February 25, 2021

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Quote

1 January 1, 2019. This document is referencing the
2 Triumph name that was established in late 2018 as an
3 addendum to the Total Merchant Supplies contract
4 from 2014.

5 Q. Right. I understand. I want to make sure I
6 understand what you are saying. My question is --
7 let's go back to Exhibit 2.

8 A. Okay. I'm back there now.

9 Q. Let's just scroll all the way to the last page again
10 and we are going to read it in reverse.

11 A. It's still loading.

12 Q. The same here. Let me know when it pops up for you.

13 A. It's still loading. It's there.

14 MR. ZANN: Are you okay going off the
15 record for one moment?

16 MR. PELUSO: Sure.

17 (Discussion off the record.)

18 MR. PELUSO: Back on the record.

19 BY MR. PELUSO:

20 Q. So Exhibit 2, this Sales Representation Agreement,
21 dated January 15, 2014, between Total Merchant
22 Services and Total Merchant Supplies, LLC, is it
23 your understanding that the relationship between
24 Total Merchant Services and Triumph is governed by
25 this contract?

1 A. Yes.

2 Q. So both Total Merchant Supplies and Triumph are
3 operating under this agreement?

4 A. That's what it appears as, yes.

5 Q. Understood. And is this a form contract? Do you
6 know what a form contract is?

7 A. No.

8 Q. A standard contract that can be used over and over
9 again with various agents. So it appears to me to
10 be a form contract because there is just lines left
11 blank where you can handwrite in Total Merchant
12 Supplies or whichever entity you would like to use.

13 A. Yes, that's correct, it's a form contract. We would
14 use that with any sales rep that wanted to sign up
15 with us.

16 Q. Do you know during what period of time this form
17 Sales Representation Agreement would have been used?

18 A. I don't know that in regards to TMS, I don't know
19 that, because that was before the acquisition. They
20 were using that before.

21 Q. Understood.

22 MR. PELUSO: I am really sorry. Can we
23 take a two-minute break here.

24 (A short recess was taken.)

25 BY MR. PELUSO:

1 where we would need more documents when they submit
2 the deal or what would be prohibited, which means we
3 couldn't accept the merchant application at all. So
4 what that's saying is it's saying that they are only
5 going to actively go after businesses that would be
6 approved through our underwriting guidelines based
7 on their MCC codes.

8 Q. How is all of this explained to the SR? Are there
9 periodic training sessions? Are there on-boarding
10 seminars when someone becomes an SR?

11 A. Every SR that we set up has had industry experience,
12 we don't accept the SRs that don't have industry
13 experience so they should already know this, but we
14 do have training sessions and things like that that
15 would cover this if changes were made basically to
16 the prohibited or restricted list, we send out
17 communications that say, Hey, there is a new list,
18 or we have trainings that are held on it if it needs
19 to be gone over with them.

20 Q. And are these training sessions held at the
21 beginning of the relationship?

22 A. They can be held at any time.

23 Q. Okay. How often would you say that they are held?

24 A. The training sessions would be more prevalent in the
25 beginning, if you were a new SR signing up with us,

1 A. His name is Chuck, C-H-U-C-K; Cullen, C-U-L-L-E-N.

2 Q. Got it. Thank you. Based on the answer you just
3 gave, I am not expecting you to know this, but do
4 you know how many training sessions TMS had with
5 Triumph?

6 A. I don't know at all. I have no idea.

7 Q. But it's possible Chuck would know?

8 A. No, because Chuck is a fairly new employee.

9 Q. Okay.

10 A. And the people that ran that before are no longer
11 with the company.

12 Q. Do you recall their names?

13 A. No, I don't know who they were. That was prior to
14 the acquisition.

15 Q. Okay. So in these training sessions, in addition to
16 training people in how to use the portal and making
17 sure they are fluent in Total Merchants' products
18 and services, is there any sales training that's
19 provided?

20 A. No, not in our training sessions, no.

21 Q. Is there any sales training that's provided in
22 different sessions?

23 A. Not that I am aware. Not anything that we offer,
24 that TMS offers.

25 MR. ZANN: I am going to object real

1 Q. You are on Exhibit 2?

2 A. Yes. Yes, it's in there.

3 Q. Understood. So there is no other involvement in how
4 SRs sell the product other than what's governed by
5 the contract?

6 A. Correct.

7 Q. There is no educational programs or documents
8 related to sales or marketing that's provided to
9 SRs?

10 A. No, just the agreement that they sign here that
11 talks about how they are supposed to conduct
12 business and what we expect them to do. Other than
13 that, they are on their own. We don't see -- we
14 don't talk to them about this once they have signed
15 it.

16 Q. So there is no oversight over how SRs market the
17 product, other than the contract?

18 MR. ZANN: Object to form. Go ahead and
19 answer.

20 THE WITNESS: If they want to do marketing
21 with us, they have to clear it through us first.
22 They have to send us what they want to use for
23 marketing and we would need to okay that for them.

24 BY MR. PELUSO:

25 Q. Does that include telemarketing?

1 A. Yes. Any type of marketing they would have to clear
2 that through us first, then we would say yes or no.

3 Q. Do you know if Triumph submitted a request for
4 approval of telemarketing?

5 A. I have no record of them doing that anywhere.

6 Q. Did you look for it?

7 A. No.

8 Q. Do you know if anyone else has looked for it?

9 A. I don't know. I don't know if anyone else has, no.

10 Q. If an SR did submit a request for permission to
11 telemarket, what sort of criteria would TMS use to
12 determine whether it was going to approve or
13 disapprove the request?

14 A. I am not aware of exactly what TMS would say is okay
15 or not okay but it would fall back to this section
16 here where does it meet the consumer protection
17 laws. And then the company they are using, if they
18 are going to use somebody to do the marketing, are
19 they in line with those laws also.

20 Q. Do you know who would be involved in that evaluation
21 process? Who would review the applications and
22 investigate whether it would be approved or not
23 approved?

24 A. At that time, no, I don't.

25 Q. Well, what about now. Are you aware of who would be

1 make sure it has the logo correctly on there and
2 give it a yes or no. If they ask to do other types
3 of business, like telemarketing and things like
4 that, we always say no to that.

5 Q. You never approve an SR to do telemarketing?

6 A. I personally haven't, no.

7 Q. So does TMS take any steps to ensure that SRs are
8 not doing telemarketing?

9 A. I mean, we have thousands of sales reps so there is
10 not really a good way to do that, you know. There
11 is no proactive steps to see what a specific SR is
12 doing on a day-to-day basis, in other words. What
13 we review is the applications that they send to us
14 and if we can accept them or not.

15 Q. Got you.

16 A. We are basically the end point. They get their own
17 business and then they submit the application to us
18 and we say yes or no through our Underwriting
19 Department.

20 Q. I got it. Give me a moment. I am going to label
21 another exhibit?

22 (Off the record.)

23 MR. ZANN: I am going to designate the
24 deposition confidential because of the exhibits
25 which we are discussing that have also been

1 account rep assigned to that account, it wouldn't
2 have been too far in the past?

3 A. Yes, but they weren't assigned anybody because they
4 weren't producing any merchant accounts.

5 Q. Understood. Okay. What was kind of the
6 threshold -- I know you said InfoFree wasn't made
7 available to everyone, it was essentially the SRs
8 that were doing a good job. Do you know what the
9 criteria was, how many sales a month or a year would
10 someone have to make to be given access to those
11 leads?

12 A. I believe at the time it was 50 or more a month.

13 Q. And when you say at the time, I just want to make
14 sure we are on the same page, what time period are
15 we talking about?

16 A. When I came into TMS, 2017 until we cut ties with
17 InfoFree.

18 Q. Last year?

19 A. Right, 2020.

20 Q. So it was -- was that 50 a month? 50 a year?

21 A. Per month.

22 Q. 50 per month, okay.

23 MR. PELUSO: I don't think I have anything
24 else for you. So, Lawren, you can take over.

25 MR. ZANN: Give me one moment to gather my

1 copyright.

2 A. Yes. It's the same one as the other one that we
3 just looked at.

4 Q. When you say it's the same one as the other one, are
5 you stating that it references Total Merchant
6 Services, Inc.?

7 A. Yes, it references Total Merchant Services, Inc.

8 Q. And are you here today providing testimony on behalf
9 of Total Merchant Services, Inc.?

10 A. No.

11 Q. Now, if you can go to Exhibit 3.

12 A. Okay.

13 Q. I am going to try to clarify this. I know we
14 ultimately determined the relationship between the
15 respective parties but I think it's worth maybe a
16 minute to just clarify a few things.

17 A. Okay.

18 Q. Go to Exhibit 3.

19 A. I'm there.

20 Q. Now, do you recall discussing this document with
21 Mr. Peluso earlier in today's deposition?

22 A. Yes.

23 Q. And in the course of that discussion, I believe you
24 indicated that this document should also contain
25 Total Merchant Supplies; is that correct?

1 A. That's correct.

2 Q. And why did you say that?

3 A. Because this document references the document that's
4 dated January 15, 2014, which in that sales rep's
5 name d/b/a is Total Merchant Supplies.

6 Q. And if we go down to section 1 (a).

7 A. Yes.

8 Q. And you read that first line, do you see that
9 references two agent profile numbers?

10 A. Yes.

11 Q. Is one of those agent profile numbers Triumph?

12 A. Yes.

13 Q. And which one is Triumph?

14 A. 44884.

15 Q. And are you aware of which agent number is 38566?

16 A. Yes. That's Total Merchant Supplies'.

17 Q. With that understanding, is it TMS's testimony that
18 this addendum amends the agreement between both
19 Total Merchant Supplies and TMS on the one hand, and
20 Triumph and TMS on the other hand?

21 A. Yes, that's what it's referring to.

22 Q. And there was also discussion about whether Triumph
23 has its own stand-alone sales rep agreements. Do
24 you recall that testimony?

25 A. Yes.

1 Q. Are you aware of Triumph having a sales rep
2 agreement separate and apart from the January 15,
3 2014 agreement?

4 A. I am not.

5 Q. And is it TMS's testimony that Triumph, through this
6 Exhibit 3 special compensation addendum we are
7 looking at now, adopted and incorporated the terms
8 of that January 15, 2014, sales rep agreement?

9 A. Yes.

10 Q. Thank you. I just wanted to clarify the
11 relationship between the parties. You also earlier
12 testified that TMS does not have any involvement in
13 Triumph's sales. Do you recall that testimony?

14 A. Yes.

15 Q. And I believe you followed that up with except as
16 reflected in the sales rep agreement. Do you recall
17 that?

18 A. Correct, yes.

19 Q. And part of that you referenced was there being
20 Triumph's obligation to adhere to all laws including
21 consumer protection laws. Do you recall that?

22 A. Yes.

23 Q. In addition to that section of the agreement, would
24 TMS also have involvement in Triumph's sales to the
25 extent that TMS required Triumph to submit marketing

1 materials for approval prior to using those
2 marketing materials?

3 A. Yes.

4 Q. And based on your review of TMS's documents, have
5 you seen any requests from Triumph to use any
6 marketing materials?

7 A. No.

8 Q. And when referring to any marketing materials, I am
9 going to make it a little more specific, how about
10 as it relates to telemarketing scripts?

11 A. No.

12 Q. Now, when you also talked about TMS's approach to
13 compliance with consumer protection laws, you
14 indicated that that's reflected in the sales rep
15 agreement. Do you recall that testimony?

16 A. Yes.

17 Q. In addition -- well, strike that. If Triumph were
18 to have provided you with a telemarketing script,
19 would you have conferred with your in-house counsel
20 concerning how you would approach the approval of
21 such marketing platform?

22 A. Yes.

23 Q. But in this instance, you did not confer with your
24 in-house counsel because such script was never
25 submitted to TMS?

1 A. That's correct.

2 Q. As far as you are aware, beyond this one Exhibit 3,
3 Special Compensation Addendum, was the Triumph sales
4 rep agreement ever modified?

5 A. No, not that I am aware of.

6 Q. So it's TMS's testimony that the January 15, 2014
7 agreement, as modified by this Exhibit 3 Special
8 Compensation Addendum, is the terms and conditions
9 of the relationship between TMS and Triumph?

10 A. Yes.

11 Q. Now, pivoting towards Mr. Judy, I am going to ask a
12 similar set of questions.

13 A. Okay.

14 Q. Are you aware of Mr. Judy's Sales Representation
15 Agreement having been amended or otherwise modified?

16 A. No.

17 Q. So similar to what you have just testified to as it
18 relates to Triumph, for Mr. Judy, is it a fair
19 statement that the terms and conditions of the
20 relationship between TMS and Mr. Judy are as
21 reflected in that Sales Representation Agreement?

22 A. Yes.

23 Q. And I know there was a lot of discussion about the
24 use of TMS's name and logo on certain documents that
25 Mr. Judy appears to have used. Do you recall that

1 line of testimony?

2 A. Yes.

3 Q. To the extent Mr. Judy was permitted to use TMS's
4 name or logo, is it TMS's position that that
5 authority would be reflected in the Sales
6 Representation Agreement between Mr. Judy and TMS?

7 A. Yes, it would be in there.

8 Q. So really what I am getting at is outside of that
9 Sales Representation Agreement between Mr. Judy and
10 TMS, there are no other written agreements you are
11 aware of that set forth the rights and obligations
12 between the respective parties?

13 A. No.

14 Q. Now how about you pull up Exhibit 12 for me real
15 quick.

16 A. It's loading. I have it up.

17 Q. I believe you testified earlier that you are not
18 familiar with this document; is that correct?

19 A. Correct.

20 Q. And this is not a document TMS provides to any third
21 parties; is that correct?

22 A. Correct.

23 Q. Now, looking at the first page, kind of right in the
24 middle of the page, you will see a red arrow that
25 says this is 100 percent free. Do you see that?

1 A. I do.

2 Q. And if you go down a little bit more, you will see
3 in red there is what appears to be a portion of a
4 URL. Do you see that?

5 A. I do.

6 Q. And that URL reads `www.americanmerchants.co`; is that
7 correct?

8 A. Yes.

9 Q. Is `www.americanmerchants.co` TMS's website?

10 A. No.

11 Q. Now, just to kind of clean up the testimony as it
12 relates to InfoFree. You had mentioned that only
13 certain sales reps would be put in contact with
14 InfoFree; is that correct?

15 A. Yes.

16 Q. And you had stated that that's based upon the
17 production of those sales reps; is that right?

18 A. Yes.

19 Q. And I believe you said you think it might have been
20 50 merchant application submissions per month which
21 would lead to the provision of InfoFree's
22 information; is that right?

23 A. Yes; it was significant.

24 Q. So based on that testimony, as you sit here today,
25 knowing that Triumph did not submit a single

1 merchant application to TMS, is it TMS's belief that
2 it did not provide InfoFree's information to
3 Triumph?

4 A. Yes, that's our belief.

5 Q. And pivoting to the policies and procedures of TMS
6 as it relates to compliance with the TCPA or other
7 consumer protection laws. Kind of going back to
8 what you and I discussed maybe two or three minutes
9 ago, in addition to the agreement to adhere to all
10 laws, the SRA requires Triumph to submit any
11 marketing materials to TMS for approval; is that
12 right?

13 A. That's correct.

14 Q. And similarly, it required the same of Mr. Judy; is
15 that correct?

16 A. Yes, that's correct.

17 Q. And you testified earlier that had Triumph submitted
18 a telemarketing script, you would have conferred
19 further with in-house counsel concerning whether or
20 not to approve the use of such script; is that
21 right?

22 A. Yes.

23 Q. In addition to the conferral as to whether or not
24 you would have approved the use of such script,
25 would you investigate further in terms of the manner

1 in which telephone calls were being placed by
2 Triumph in this instance?

3 A. I'm sorry. Could you repeat that?

4 Q. Sure. You had indicated that you would confer with
5 your in-house counsel to determine if you would
6 approve the telemarketing script; is that right?

7 A. Yes, that's correct.

8 Q. But kind of taking it one step further, in addition
9 to conferring to determine if you are going to
10 approve the use of the script, would you also follow
11 up with Triumph to investigate further concerning
12 the platform in which they are placing telephone
13 calls -- in which they are using to place the
14 telephone calls?

15 A. Yes, we would want to know that.

16 Q. But in this case, that did not happen with Triumph;
17 is that correct?

18 A. That's correct.

19 Q. And that did not happen because Triumph never sought
20 TMS's approval to use telemarketing scripts; is that
21 correct?

22 A. Right, they didn't send us anything.

23 Q. And in an attempt to be efficient here, does the
24 same hold true with Mr. Judy?

25 A. Yes, the same situation.

EXHIBIT D

Fred Heidarpour - March 3, 2021

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ABANTE ROOTER AND PLUMBING,)
INC., a California)
corporation, individually)
and on behalf of all others)
similarly situated,) No. 3:19-CV-05711
Plaintiff,)
vs.)
TOTAL MERCHANT SERVICES,)
LLC, a Delaware limited)
liability company,)
Defendant.)

REMOTE VIDEOTAPED DEPOSITION
OF
FRED HEIDARPOUR
Wednesday, March 3rd, 2021
Orinda, California

Reported by: Janie E. Wilkins, CSR No. 12497

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APPEARANCES

For Plaintiff: Woodrow & Peluso, LLC
BY MR. TAYLOR SMITH
Attorney at Law
3900 East Mexico Avenue
Suite 300
Denver, Colorado 80210
(720) 213-0675
tsmith@woodrowpeluso.com

For Defendant Total Greenspoon Marder, LLP
Merchant Services: BY MR. LAWREN A. ZANN
Attorney at Law
200 East Broward Boulevard
Site 1800
Fort Lauderdale, Florida 33301
(954) 527-2427
lawren.zann@gmlaw.com

The Videographer: Terri Perkins

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WITNESS INSTRUCTED NOT TO ANSWER:

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1	Q. Okay. So are you aware of the telephone	09:55:51
2	numbers that received the alleged calls at issue in	09:55:55
3	this litigation?	09:56:00
4	A. Yes, that's the number that we went over it	09:56:02
5	yesterday. Yes.	09:56:06
6	Q. Okay. And they're actually three different	09:56:07
7	numbers; correct?	09:56:10
8	A. Yes.	09:56:11
9	Q. Do you recall what those three numbers are?	09:56:13
10	A. Yes.	09:56:16
11	Q. Okay. And what were those three numbers?	09:56:17
12	A. (925) 828-1080, (209) 383-3803,	09:56:19
13	(510) 534-1636.	09:56:32
14	Q. Now, just so we can use the same term going	09:56:35
15	forward, because I'm not a numbers guy. If I refer	09:56:39
16	to the number ending in -3803 or the -3803 number,	09:56:42
17	will you understand I'm referring to the	09:56:46
18	(209) 383-3803 number you just testified to?	09:56:48
19	A. Yes.	09:56:53
20	Q. And, similarly, if I refer to a number as	09:56:54
21	the number ending in -1080 or the -1080 number, will	09:56:57
22	you understand I'm referring to the	09:57:03
23	telephone number (925) 828-1080 you just testified	09:57:04
24	to?	09:57:10
25	A. Yes.	09:57:10

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1 in 2010, 2012; right? At the time I had the cell 10:04:17
2 phone for it -- when I had a cell phone for it, then 10:04:22
3 we forward it to my number. 10:04:27

4 All of those numbers that I said if you go 10:04:32
5 through my AT&T bill, you're going to see I have 10:04:35
6 about -- many numbers, 15, 18 numbers, whatever. At 10:04:40
7 the time, we had it, but all of them right now 10:04:46
8 comes to (510) 385-7447. 10:04:48

9 If I want to go in and deforward it, that 10:04:52
10 means I have to go and find the phone that I got at 10:04:57
11 the time of -- that I got. Then I'm -- I can answer 10:05:00
12 on that cell phone. But practically all of them come 10:05:03
13 to my (510) 385-7447. 10:05:07

14 Q. All right. I understand. So my question to 10:05:10
15 you is the telephone calls that you've alleged in 10:05:14
16 this litigation -- which I will represent to you 10:05:17
17 occurred in -- from July 2018 forward, are you aware 10:05:20
18 of that? 10:05:27

19 A. Yes. 10:05:27

20 Q. Those calls that you've alleged in this 10:05:29
21 litigation, are you aware that you've alleged they 10:05:31
22 were received on the numbers ending in -3803, -1080, 10:05:35
23 and -1636? 10:05:39

24 A. Yes. 10:05:41

25 Q. And your testimony today is that the calls 10:05:42

Fred Heidarpour - March 3, 2021

1 received on the numbers ending in -3803, -1080, 10:05:46
2 and -1636, are -- are forwarded to your 10:05:51
3 (510) 385-7447 telephone; is that correct? 10:05:57
4 A. Yes. 10:06:01
5 Q. So at the time in 2018, in 2019 when these 10:06:03
6 alleged calls occurred, is it a fair statement that 10:06:07
7 the calls to the number ending in -3803 forwarded to 10:06:10
8 your telephone (510) 385-7447? 10:06:16
9 A. Correct. 10:06:20
10 Q. And you've stated that if you wanted to take 10:06:21
11 the number ending -3803 off of call forwarding, you 10:06:25
12 would have to go find the physical telephone 10:06:29
13 associated with the number -3803; is that correct? 10:06:33
14 A. Correct. 10:06:36
15 Q. So if you took it off call forwarding and 10:06:38
16 went to find that physical phone, where would you 10:06:41
17 look for that physical phone associated with the 10:06:46
18 number -3803? 10:06:49
19 MR. SMITH: Objection -- 10:06:50
20 THE WITNESS: I'd have to go and find -- I 10:06:51
21 have boxes of the phones. 10:06:54
22 BY MR. ZANN:
23 Q. Do you know where those boxes are? 10:06:56
24 A. They're in Scottsdale. 10:06:58
25 Q. They're in Scottsdale. Okay. 10:07:00

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1	A. Yes.	10:07:01
2	Q. And the box in Scottsdale, is that also	10:07:02
3	associated with the number ending in -1080?	10:07:04
4	A. No, -1080 was the -- was the old -- I	10:07:12
5	believe, it's a 30-year-old number that was forwarded	10:07:18
6	to my cell phone that; they changed it from landline	10:07:22
7	to cell line and then they tried to forward it.	10:07:26
8	Q. Okay. So is there not a cellular telephone	10:07:29
9	associated with the number ending in -1080, if you	10:07:34
10	took it off the forward number?	10:07:38
11	A. Right. This is a cell number. Yes.	10:07:40
12	Q. Right. So is it a fair statement that if	10:07:43
13	you were not forwarding the number ending -1080, you	10:07:45
14	would not have a cellular telephone in which to	10:07:49
15	answer calls placed to that number?	10:07:52
16	A. Right.	10:07:54
17	Q. And as it relates to the number ending	10:07:56
18	in -1636, would you also search the box in Scottsdale	10:07:59
19	for the physical phone associated with the number	10:08:04
20	ending in -1636?	10:08:06
21	A. No, that is a number -- that is a number	10:08:09
22	from 1992 that was for Abante Plumbing, and back in	10:08:12
23	early 2000 converted to a cellular number.	10:08:20
24	Q. So similar to the number ending in -1080, if	10:08:24
25	you were not forwarding the number ending in -1636,	10:08:28

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1 Q. Currently if a number came through to the -- 10:14:48
2 to the telephone number ending in -1080, it would 10:14:53
3 forward to (510) 385-7447; is that correct? 10:14:56
4 A. Yes. 10:15:01
5 Q. So my question to you is -- it's rather 10:15:02
6 simple. If call forwarding was turned off for the 10:15:05
7 number ending in -1080, is there a telephone that 10:15:10
8 would receive a call placed to the number ending 10:15:14
9 in -1080? 10:15:17
10 MR. SMITH: Objection; calls for 10:15:19
11 speculation; asked and answered. 10:15:20
12 BY MR. ZANN: 10:15:25
13 Q. You can answer. 10:15:26
14 A. I'm sorry, say it one more time. 10:15:28
15 Q. Yeah. Currently if you turned 10:15:30
16 call forwarding off to the number ending in -1080 and 10:15:32
17 a call is placed to the number ending in -1080, is 10:15:36
18 there a telephone that would receive the call? 10:15:41
19 MR. SMITH: Same objections. 10:15:46
20 THE WITNESS: No. 10:15:47
21 BY MR. ZANN: 10:15:48
22 Q. Okay. And just as a point of comparison, we 10:15:48
23 have established through your testimony that as it 10:15:55
24 relates to the number ending -3803, there is a 10:15:58
25 telephone that would receive a call to -3803, that 10:16:03

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1 trying to trick you, based on the one possible cell 10:23:08
2 phone your son may have, the two you have, and the 10:23:11
3 one that James has, Aldo has, and Moses? 10:23:15
4 A. Yeah. 10:23:20
5 Q. Yeah, I just do math and I count six; is 10:23:20
6 that right? 10:23:23
7 A. Yeah. 10:23:24
8 Q. Okay. I want to make sure I'm 10:23:25
9 understanding. 10:23:26
10 Okay. Without looking at the complaint -- 10:23:27
11 and this isn't a trap here. I just want to know if I 10:23:37
12 should pull up the complaint on Exhibit Share. 10:23:41
13 Are you aware of the dates you've alleged to 10:23:43
14 have received the cellular telephone calls at issue? 10:23:45
15 A. In general, yes. 10:23:50
16 Q. Okay. And what are those dates that you 10:23:52
17 received telephone calls you alleged to be in 10:23:55
18 violation of the TCPA in this lawsuit? 10:23:59
19 A. Starting in 2015. 10:24:00
20 Q. Okay. Do you remember a specific date? 10:24:04
21 A. No. 10:24:06
22 Q. And that's why I had asked you. I'm not 10:24:08
23 trying to trap you. If we need to go through the 10:24:10
24 complaints or your discovery responses, we can do 10:24:12
25 that if you need that to refresh your recollection. 10:24:15

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1 A. Definitely. There is no way that I can 10:24:18
2 remember. 10:24:20
3 Lawren, just for your information, on the 10:24:20
4 average -- on the average, I get 10 to 20 calls a day 10:24:23
5 from telemarketers. 10:24:28
6 Q. Okay. And are those 10 to 20 telephone 10:24:29
7 calls -- is it your testimony those 10 to 20 10:24:32
8 telephone calls are associated with TMS? 10:24:35
9 A. No. I'm just talking about in general. 10:24:39
10 When you asked me that if you need to refresh my 10:24:41
11 recollection, I'm saying that I'm getting that many 10:24:45
12 calls every day. 10:24:48
13 Q. And as it relates to your receipt of 10 10:24:50
14 to 20 telephone calls to your cellular telephones, 10:24:54
15 have you filed any lawsuits against the entities who 10:24:57
16 have placed those calls? 10:25:00
17 A. I -- I try to do my best. That is the only 10:25:02
18 way that we can stop them. 10:25:05
19 Q. Now, kind of going back to where this line 10:25:06
20 of questioning started. I'm going to go ahead and 10:25:11
21 pull up the complaint on Exhibit Share because if I 10:25:14
22 say a date, you seem to indicate you won't know 10:25:18
23 unless you look at a document; is that fair? 10:25:20
24 A. Yes. 10:25:23
25 Q. Okay. So give me one second. 10:25:23

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1 A. I'm not 100 percent sure, but it looked like 10:32:20
2 it, yes. 10:32:23

3 Q. Okay. What occurred on that call that makes 10:32:23
4 you believe TMS called you directly on 10:32:29
5 March 22nd, 2019? 10:32:32

6 A. That's -- as I said, I don't -- I don't 10:32:34
7 recall now, but if I -- if I remember it right, then 10:32:38
8 I press it, then I talk to the person that -- that 10:32:41
9 person was talking about the T- -- I'm not 100 10:32:44
10 percent sure. I don't know. I don't remember. That 10:32:47
11 was obviously -- it was two years ago. 10:32:50

12 Q. Okay. Did you take notes from that call? 10:32:52

13 A. Usually what I do is -- because I have a 10:32:56
14 daily call that basically I throw it away every 30 10:33:02
15 days. If I get a call or something like that, I just 10:33:06
16 jot on it. And then I'm -- then after I jot on it, 10:33:09
17 I -- basically after 30 days I throw it away. 10:33:12
18 Usually that -- that is my daily call; that every 10:33:15
19 call that I get, I write it down. 10:33:18

20 Q. Okay. And you say usually you engage in 10:33:19
21 that practice; correct? 10:33:23

22 A. Yes. 10:33:25

23 Q. Did you engage in that practice on 10:33:26
24 March 22nd, 2019? 10:33:28

25 A. To my best recollection, yes. 10:33:31

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1 Q. So where would those notes be now? 10:33:34

2 A. Oh, it's gone. Those notes are for -- 10:33:39

3 temporary until -- until I basically provide it to my 10:33:42

4 attorney or whatever. I write it down. After that, 10:33:45

5 I throw it away. 10:33:47

6 Q. When you say you write it down, are these 10:33:49

7 notes taken in a digital medium? 10:33:51

8 A. No, no, no. This is -- it's old-fashioned. 10:33:55

9 Q. Okay. So you handwrite the notes? 10:33:59

10 A. Handwrite the notes, yes. 10:34:01

11 Q. So to the extent you took notes on 10:34:03

12 March 22nd, 2019, those notes would have been 10:34:05

13 handwritten; is that correct? 10:34:08

14 A. Yes. 10:34:10

15 Q. And if you took those handwritten notes, I 10:34:11

16 believe you indicated you provide them to your 10:34:13

17 attorney? 10:34:17

18 A. Not -- not the notes. I just -- I just make 10:34:17

19 it for myself. Then I tell my attorney, "I just 10:34:21

20 received a call, and it was a prerecorded call or the 10:34:25

21 ATDS." That's what I tell them. 10:34:28

22 Q. Okay. 10:34:31

23 A. That's the extent of my note. 10:34:32

24 Q. Sure. That's your usual practice here. But 10:34:35

25 as it relates to this March 22nd, 2019, call, do you 10:34:37

Fred Heidarpour - March 3, 2021

1 we discussed your usual practice of taking notes; 10:40:20
2 correct? 10:40:23
3 A. Yes. 10:40:24
4 Q. Those notes are handwritten notes; correct? 10:40:25
5 A. Yes. 10:40:28
6 Q. And I asked you if you still have those 10:40:28
7 notes, and you indicated you do not; correct? 10:40:32
8 A. Yes. 10:40:35
9 Q. And your practice is to throw your 10:40:36
10 handwritten notes away after you've communicated to 10:40:37
11 your attorney; correct? 10:40:41
12 A. Yeah, but, see, the part that I believe you 10:40:43
13 don't understand what I'm saying is is it's not just 10:40:48
14 a note for the telemarketers. It's the other notes 10:40:51
15 too. 10:40:57
16 But what I'm saying is is, yes, I do not 10:40:58
17 keep any notes that -- this thing or something like 10:41:01
18 that. I throw it away. There is no reason to keep 10:41:04
19 it after I provide it to my attorney. 10:41:07
20 Q. Now, when you say the "other notes too," 10:41:08
21 what are those other notes you're referencing? 10:41:11
22 A. Communication that I have with an employee 10:41:14
23 in case -- for example, the customer wants to do 10:41:17
24 something, I just write it down. You know what I'm 10:41:19
25 saying? It's not something that is just for a 10:41:21

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1 telemarketer, no. 10:41:25

2 Q. So when you're referring to communications 10:41:26

3 with a customer, you're referring to Abante's 10:41:29

4 customers; correct? 10:41:32

5 A. Yes. 10:41:34

6 Q. But those notes you also throw away? 10:41:34

7 A. Yeah. If the customer, for example, called 10:41:37

8 me and said something about the concern he has or if 10:41:39

9 he wants to do something, I just make a note and then 10:41:42

10 after the job is done, I throw it away. 10:41:45

11 Q. Understood, understood. 10:41:48

12 But now coming back to the March 22nd, 2019 10:41:49

13 telephone call that you've alleged in your complaint, 10:41:52

14 are you aware of providing your notes to any 10:41:55

15 attorney? 10:41:59

16 A. No, I just called them and told them that. 10:42:00

17 Q. So your testimony is that you did not 10:42:03

18 provide the notes that you took to any attorney; but, 10:42:05

19 rather, you communicated whatever was on those notes 10:42:08

20 to an attorney? 10:42:11

21 A. Yes. 10:42:13

22 Q. Who was the attorney you communicated 10:42:14

23 your -- the substance of your notes to? 10:42:17

24 A. At the time what -- probably was Pat. 10:42:22

25 Q. Now, you say "probably." Are you guessing, 10:42:27

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1	or do you know this?	10:42:29
2	A. No, because I'm not 100 percent sure who	10:42:30
3	did -- I was talking to. Most likely it was Pat.	10:42:34
4	Q. Are you 100 percent sure that you even had a	10:42:39
5	conversation with an attorney based on your notes	10:42:44
6	that you took?	10:42:46
7	A. Yes.	10:42:48
8	MR. SMITH: I've got to use the restroom.	10:42:51
9	MR. ZANN: Yeah, absolutely. We'll take a	10:42:55
10	break.	10:42:57
11	THE WITNESS: We're going to break?	10:43:00
12	THE VIDEOGRAPHER: We are off the record.	10:43:03
13	The time is 10:43 a.m.	10:43:05
14	(Recess taken.)	10:43:12
15	THE VIDEOGRAPHER: We are back on the	10:50:25
16	record. The time is 10:51 a.m.	10:50:39
17	MR. SMITH: Lawren, can you give me two	10:50:42
18	minutes?	10:50:46
19	MR. ZANN: Going back off.	10:50:46
20	THE VIDEOGRAPHER: We are off the record.	10:50:47
21	The time is 10:51 a.m.	10:50:50
22	(Recess taken.)	10:50:55
23	THE VIDEOGRAPHER: We are back on the	10:52:35
24	record. The time is 10:53 a.m.	10:52:47
25	///	

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1	would you agree with that?	10:55:29
2	A. Yes.	10:55:30
3	Q. And you see when reading that allegation, it	10:55:31
4	states in the last sentence, "This call made using a	10:55:35
5	prerecorded voice message; correct?	10:55:38
6	A. Right.	10:55:41
7	Q. Is that why you believe the March 22nd,	10:55:41
8	2019, call was a prerecorded call because it's	10:55:44
9	specifically alleged in the complaint?	10:55:48
10	MR. SMITH: Objection; mischaracterizes the	10:55:49
11	witness' prior testimony.	10:55:52
12	BY MR. ZANN:	10:55:54
13	Q. Go ahead.	10:55:57
14	A. No, as I said earlier, I made a note that	10:55:57
15	was in the middle of the call.	10:56:00
16	Q. I understand that. If you had not read this	10:56:02
17	complaint to refresh your recollection, would you	10:56:05
18	have been able to testify today that you received a	10:56:09
19	call on March 22nd, 2019, that you believe was a	10:56:12
20	prerecorded voice message?	10:56:15
21	MR. SMITH: Objection; calls for	10:56:17
22	speculation.	10:56:21
23	THE WITNESS: I don't know. Maybe.	10:56:21
24	BY MR. ZANN:	10:56:23
25	Q. Do you have any independent recollection of	10:56:23

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1 what occurred on the telephone call that happened on 10:56:26
2 March 22nd, 2019? 10:56:29
3 A. No. 10:56:34
4 Q. Do you recall what -- I'm sorry, go ahead. 10:56:36
5 A. What do you mean by -- as I -- as what is 10:56:38
6 alleged here, that on the date that was a prerecorded 10:56:41
7 call, and that was the date that I remember that was 10:56:47
8 prerecorded because that's as I said in the 10:56:51
9 complaint. 10:56:54
10 Q. I understand that at the time this complaint 10:56:56
11 was filed you remembered it; but as you sit here 10:56:58
12 today, do you remember the call that occurred on 10:57:01
13 March 22nd, 2019? 10:57:03
14 A. To my best recollection, that was a 10:57:06
15 prerecorded call, and it says if you want to do A, B, 10:57:08
16 C, D, press whatever number, and then I did, and then 10:57:11
17 I talked to someone. That's -- that's the reason why 10:57:14
18 I said it was a prerecorded voice message. 10:57:17
19 Q. So let's break that down a little further. 10:57:19
20 What did the prerecorded voice message say? 10:57:22
21 A. Again, it says if you want to go and save 10:57:25
22 some money on your processing -- on your credit card 10:57:27
23 processing, dial 1 or 2, or whatever it was. 10:57:31
24 Q. And in the course of that prerecorded 10:57:34
25 message, did it reference TMS? 10:57:37

1 the substance of their call. 11:18:03

2 Q. Okay. And are there any documents you rely 11:18:06

3 upon to provide that testimony besides the actual 11:18:10

4 complaints you just reviewed? 11:18:14

5 MR. SMITH: Objection -- (Zoom 11:18:16

6 interference). 11:18:22

7 BY MR. ZANN: 11:18:22

8 Q. You can answer. 11:18:22

9 A. If I would have it, I would provide it. My 11:18:23

10 counsel would have it. 11:18:25

11 Q. Do you know if you have it? 11:18:26

12 A. I don't recall because, as you can see, we 11:18:28

13 are receiving so many calls and so many e-mails, I 11:18:31

14 don't recall one by one. 11:18:34

15 Q. So because you don't recall even if you have 11:18:36

16 that e-mail, does it also follow that you don't know 11:18:38

17 if such an e-mail even exists in the first instance? 11:18:42

18 MR. SMITH: Objection; argumentative. 11:18:46

19 THE WITNESS: Sir, as I said, I received so 11:18:48

20 many calls from them and so many e-mails from them, 11:18:51

21 how is it possible that I can tell you three years 11:18:55

22 ago, two years ago what did I receive and what did I 11:18:58

23 not receive? 11:19:01

24 All I can tell you is that the complaint 11:19:02

25 that reflects -- the accurate of my memory at the 11:19:05

1 time, that I gave it to my attorneys. 11:19:09

2 BY MR. ZANN: 11:19:11

3 Q. Are you aware of having received any e-mails 11:19:11

4 following the March 22nd, 2019, call you've alleged 11:19:14

5 took place with a rerecorded voice message? 11:19:18

6 MR. SMITH: Objection; asked and answered. 11:19:20

7 THE WITNESS: I would have to look at it and 11:19:23

8 see. 11:19:25

9 BY MR. ZANN: 11:19:26

10 Q. And when you say "look at it," what is the 11:19:26

11 "it" that you would look at? 11:19:29

12 A. The e-mail that was provided to TMS -- the 11:19:32

13 documents that were provided to TMS. 11:19:35

14 Q. Now, you say "the documents that were 11:19:37

15 provided to TMS," but what I'm asking you -- strike 11:19:38

16 that. 11:19:41

17 Following the e-mail which may have -- you 11:19:43

18 may have received following your March 22nd, 2019, 11:19:46

19 call you alleged to have placed by a prerecorded 11:19:49

20 voice message, is it your testimony that TMS was 11:19:52

21 either the sender or a recipient of that e-mail? 11:19:57

22 A. I'm sorry, ask me one more time. 11:20:03

23 Q. Sure. March 22nd, 2019, you've alleged you 11:20:05

24 received a telephone call using a prerecorded voice 11:20:10

25 message; correct? 11:20:13

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1 being November 5th, 2018 -- you may have to actually 11:51:18
2 scroll to the Second Supplemental Response to answer 11:51:27
3 this. But I'll ask the question nonetheless. 11:51:30
4 Was that telephone call allegedly placed to 11:51:33
5 the -3803 telephone number? 11:51:38
6 A. I'm sorry, what is the date? November 5th? 11:51:42
7 Q. Yes. 11:51:45
8 A. Yes. 11:51:46
9 Q. First in time to most recent. 11:51:47
10 A. Yes. 11:51:49
11 Q. Do you recall the contents of that telephone 11:51:53
12 call? 11:51:56
13 A. No, just as I said, the -- the substance of 11:51:59
14 the call that I remember that was selling the 11:52:06
15 products. I do not know verbiage, verbatim, what did 11:52:09
16 they say, what did he say, whatever, I don't -- I 11:52:14
17 don't recall that. The substance of it was to sell 11:52:16
18 the TMS product. That's what it was. 11:52:18
19 Q. Do you recall the identity of the individual 11:52:21
20 with whom you spoke on the November 5th, 2018, call? 11:52:25
21 A. I'd have to go back to the -- if I -- if I 11:52:29
22 requested -- most of the time I would request the 11:52:32
23 e-mail. If I received the e-mail, then I can see who 11:52:35
24 was the individual. 11:52:39
25 Q. This may help fast-track this line of 11:52:40

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1 asked for an e-mail, you would have to look at that 11:55:11
2 e-mail? 11:55:14

3 A. Yes, that was the one -- or if I talked to 11:55:15
4 the individual, that I had a name; that I'd put it 11:55:17
5 over here that I talked to A, B, and C, whatever, 11:55:20
6 then I would put it over here. 11:55:23

7 Q. But sticking -- sticking with the 11:55:25
8 November 5th, 2018, call we're discussing, do you 11:55:28
9 recall the name of the individual with whom you 11:55:33
10 spoke? 11:55:35

11 A. At this point while looking at this, no. 11:55:36
12 This is an e-mail in this place that I can't recall. 11:55:39

13 Q. Now, following up on the second part of your 11:55:42
14 statement, unless you looked at the e-mail, to answer 11:55:45
15 that question that I just asked you -- the identity 11:55:49
16 of the individual -- is your response that you would 11:55:53
17 have to look at an e-mail, to the extent an e-mail 11:55:55
18 actually exists? 11:55:59

19 A. And plus there's no way I can remember three 11:56:01
20 years ago who did I talk to. 11:56:05

21 Q. I get it. So as you sit here today, you 11:56:08
22 can't remember when you spoke -- the name of the 11:56:11
23 individual you spoke with on November 5th, 2018, 11:56:13
24 without reviewing some secondary document, whether 11:56:16
25 that's an e-mail or otherwise? 11:56:19

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1	A. Right.	11:56:23
2	Q. That's a fair statement that I just made;	11:56:23
3	correct?	11:56:25
4	A. Right, I -- I cannot remember three years	11:56:26
5	ago who did I talk to.	11:56:29
6	Q. It's not a trick. I think -- I understand	11:56:30
7	that.	11:56:33
8	Now, if we go down to November 12th, you see	11:56:33
9	that you actually provide some specifics from that	11:56:36
10	telephone call; correct?	11:56:40
11	A. Yes.	11:56:42
12	Q. And by "specifics" -- because before you	11:56:42
13	told me you didn't know what specifics means -- you	11:56:44
14	see that you actually have the name of the individual	11:56:47
15	you purportedly spoke with; correct?	11:56:50
16	A. I didn't say that I didn't know what	11:56:53
17	"specific" means. You've been asking for the	11:56:54
18	substance, as I said, "I don't know what you're	11:56:56
19	talking about."	11:56:58
20	If I talked to the individual that I know	11:56:59
21	the name, that I make the note, then I would go and	11:57:01
22	put it in a complaint like this one -- that I put it	11:57:05
23	down exactly. Who did I talk to, what did I talk to.	11:57:08
24	Q. So building off of what you just stated, the	11:57:11
25	idea that you spoke with Tony Adams, that would have	11:57:15

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1 been reflected in your notes? 11:57:18

2 A. Definitely that's what it was. That's what 11:57:21

3 I knew -- that Tony Adams -- and I asked for an 11:57:24

4 e-mail, and then he sent me the e-mail. 11:57:26

5 Q. And, similarly, the fact that you knew Tony 11:57:29

6 Adams provided you with his telephone number, 11:57:32

7 (631) 855-3291, you know of that because of your 11:57:35

8 notes; is that correct? 11:57:41

9 A. Yes, that's -- that's why I write it down, 11:57:43

10 yes. 11:57:46

11 Q. All I'm trying to understand is how you 11:57:46

12 come -- how you understand this information. Okay. 11:57:48

13 And that would have been reflected in your notes? 11:57:53

14 A. Yes. 11:57:55

15 Q. And -- now, if we go to November 14th, you 11:57:57

16 see that you provide some specifics here, as well, 11:58:03

17 with an agent named Joseph. And that Joseph said -- 11:58:06

18 responded by telling -- 11:58:14

19 A. Me that you're stupid. Yes, I remember 11:58:16

20 that. 11:58:18

21 Q. So is that also -- or was that also 11:58:20

22 reflected in your notes? 11:58:21

23 A. Definitely that one was, and I don't want to 11:58:24

24 go through it because I want to tell you a lot more 11:58:28

25 other stuff, but that's the gist of it. 11:58:32

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1 Q. So you don't know exactly who answered the 12:03:12
2 call; is that a fair statement? 12:03:14
3 A. Right. 12:03:16
4 Q. You assume it was yourself, but you don't 12:03:16
5 recall if it was yourself versus your foreman or your 12:03:18
6 wife? 12:03:22
7 A. Yes. 12:03:22
8 Q. And does the same hold true for all of these 12:03:23
9 calls, or should we go through the same exercise for 12:03:26
10 each call? 12:03:28
11 A. No, for all of the calls. As I said, 90 12:03:29
12 percent of the time I'm the one to answer the calls. 12:03:33
13 Q. And 10 percent of the time you're not. I 12:03:35
14 understand it. I now understand it for the fourth 12:03:37
15 time. But what I'm curious to know is regardless of 12:03:40
16 the allocation in which who answers the phone, all I 12:03:44
17 want to know is as you sit here today as a 12:03:48
18 representative for Abante, if you can testify 12:03:51
19 definitively as to the identity of the person who 12:03:54
20 answered the telephone calls that you've alleged in 12:03:59
21 your complaint? 12:04:02
22 A. I don't remember. 12:04:03
23 Q. Okay. Which is fair. 12:04:04
24 Now, similarly, if we go to the 12:04:10
25 March 22nd, 2019, call, would you agree with me that 12:04:12

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1	A. Yes, sir.	13:34:05
2	Q. When you received this e-mail from Aleks	13:34:05
3	Meza, is this when you learned of the entity named	13:34:09
4	Triumph Merchant Solutions, LLC?	13:34:14
5	A. You know, I don't recall. I don't know.	13:34:17
6	Q. Prior to this litigation, were you aware of	13:34:20
7	that entity, Triumph Merchant Solutions, LLC?	13:34:23
8	A. I don't think so.	13:34:27
9	Q. Have you conducted any research into that	13:34:28
10	entity, Triumph Merchant Solutions, LLC?	13:34:31
11	A. No, I did not do that. Not me.	13:34:34
12	Q. Okay. Are you aware of having served any	13:34:37
13	subpoenas on Triumph Merchant Solutions, LLC, in this	13:34:41
14	litigation?	13:34:45
15	A. I don't know. You'll have to ask my	13:34:46
16	counsel. I don't know.	13:34:50
17	Q. Is there a reason -- well, strike that.	13:34:51
18	Is it your belief that Triumph Merchant	13:34:54
19	Solutions, LLC, placed the telephone call that	13:34:57
20	preceded the sending of this e-mail on	13:35:00
21	October 8th, 2019?	13:35:02
22	A. Do you know what? Yes, but, again, it's	13:35:06
23	under the same page -- on the top it says	13:35:09
24	"www.totalmerchant.services." And I don't know how	13:35:13
25	you want to go and separate the Triumph from TMS.	13:35:17

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1 MR. SMITH: Calls for a legal conclusion. 13:38:48

2 BY MR. ZANN: 13:38:50

3 Q. As it relates to the factual basis for you 13:38:50

4 to allege the use of a Spitfire dialing system, is 13:38:54

5 that an allegation that you learned through your 13:38:58

6 attorneys? 13:39:01

7 A. A Spitfire, yes. I learned from them, yes, 13:39:03

8 in the complaint. 13:39:06

9 Q. So really what I'm getting at is you have no 13:39:07

10 personal knowledge one way or the other whether a 13:39:10

11 Spitfire dialing system was used to call you? 13:39:13

12 A. No, sir, I do not. 13:39:16

13 Q. Instead, you just relayed upon whatever 13:39:17

14 research your attorneys conducted to reach that 13:39:20

15 allegation? 13:39:24

16 A. Right. After I explained to them the method 13:39:25

17 of the call that I received, they investigated it, 13:39:27

18 and then they find out that the dialing system that 13:39:29

19 they use -- that's the name, Spitfire. 13:39:33

20 Q. Now, you have amended your complaint in 13:39:36

21 this action, have you? 13:39:40

22 A. I'm -- I don't know. 13:39:43

23 Q. So as far as you know, that allegation is 13:39:45

24 still the allegation in the complaint; that these 13:39:50

25 calls were placed using a Spitfire dialing system? 13:39:51

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1 A. I believe that's what the complaint said. 13:39:56

2 Q. Why did you sue Triumph Merchant 13:39:59

3 Solutions, LLC? 13:40:04

4 MR. SMITH: Objection; calls for -- 13:40:04

5 THE WITNESS: You have to ask my counsel. 13:40:07

6 The bottom line is Triumph or whoever was placing the 13:40:08

7 call, if -- if everything says Total Merchant 13:40:12

8 Services, I don't understand. You're working for 13:40:18

9 Total Merchant Services under a different name. 13:40:19

10 BY MR. ZANN: 13:40:23

11 Q. So, I'm sorry, go ahead. 13:40:23

12 A. I'm not an attorney. And as a reasonable 13:40:25

13 person, when he receives a call and when he receives 13:40:28

14 an e-mail, and even on the e-mail the name says 13:40:32

15 A, B, C, D, but are trying to sell the product of the 13:40:36

16 company of TMS, that -- that -- the TMS -- an 13:40:40

17 individual person, working for TMS on a different 13:40:48

18 name. 13:40:50

19 Q. And you base that conclusion off of the 13:40:51

20 sheer fact that TMS has an e-mail address -- sorry, a 13:40:53

21 URL contained within this e-mail and maybe on some of 13:41:00

22 the phone calls someone mentioned TMS? 13:41:05

23 MR. SMITH: Objection -- 13:41:08

24 THE WITNESS: No. 13:41:09

25 MR. SMITH: -- mischaracterizes the witness' 13:41:10

1 testimony.

2 BY MR. ZANN:

3 Q. What do you base the conclusion on?

4 A. No, no, no, no. I said earlier that to my 13:41:12
5 personal knowledge when I talk to the agent that they 13:41:19
6 are trying to sell the TMS product through the e-mail 13:41:21
7 that we received. Even if the e-mail said "Triumph 13:41:24
8 Merchant Solutions," but on the top of it it says 13:41:28
9 "Total Merchant Services," that is our belief that 13:41:31
10 they are all working for TMS. 13:41:34

11 BY MR. ZANN: 13:41:36

12 Q. Okay. Now, are you aware of any discovery 13:41:37
13 or testimony having been provided by Triumph Merchant 13:41:47
14 Solutions in this action? 13:41:51

15 A. No, I'm not. 13:41:53

16 Q. So similarly -- well, strike that. 13:41:56

17 Are you aware of who has been deposed thus 13:42:02
18 far in this action? 13:42:07

19 A. No, I'm not. 13:42:09

20 Q. Are you aware of -- strike that. 13:42:15

21 Now, sticking with this Exhibit 3, if you 13:42:26
22 scroll down to -- I'm not certain what page this is, 13:42:31
23 Abante-000423. 13:42:41

24 A. Yes, sir. 13:42:57

25 Q. Now, you responded to this e-mail from 13:42:57

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1 A. Yeah, I don't know how many e-mails we 13:50:18
2 provided to you. Where are the documents that we can 13:50:20
3 go through all the e-mails. 13:50:23

4 Q. I will represent to you this is the extent 13:50:25
5 of the Triumph -- this is the earliest in time, the 13:50:28
6 Triumph e-mail thread that you have produced in this 13:50:30
7 litigation. 13:50:32

8 A. Okay. 13:50:35

9 Q. June 24th, that being the first e-mail 13:50:36
10 communication you've produced in this litigation 13:50:40
11 between yourself and Triumph. And "by yourself," 13:50:42
12 again, I'm referring to Abante. 13:50:45

13 A. Okay. 13:50:47

14 Q. With that being said, because this e-mail 13:50:48
15 you sent under the name Fred Pour is not the first in 13:50:52
16 the e-mail thread, that's why I'm giving you the 13:50:57
17 opportunity to answer the question of is there an 13:51:01
18 earlier e-mail wherein you use this name Fred P-o-o-r 13:51:03
19 in communicating with Aleks Meza? 13:51:08

20 A. I don't know. 13:51:10

21 Q. Now, does your wife use that name, Fred 13:51:15
22 Poor, P-o-o-r, in communicating with individuals? 13:51:21

23 A. I don't know. 13:51:24

24 Q. Do you believe your wife uses that name when 13:51:28
25 communicating with individuals? 13:51:33

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1 Merchant Services and all other entities, or 14:37:18
2 whatever, that they're working for them, he's going 14:37:20
3 to tell them to stop it. 14:37:22

4 Q. Well, we'll get to his e-mail in a minute 14:37:24
5 because maybe that's how you interpreted it, but 14:37:27
6 those weren't the words he used. 14:37:30

7 But, be that as it may, I'm just coming back 14:37:32
8 to your statement of your main goal being to stop the 14:37:33
9 telemarketers. Let you ask you this: Are you aware 14:37:36
10 that Triumph testified to placing calls on behalf of 14:37:39
11 at least five different entities in the credit card 14:37:41
12 processing industry? 14:37:45

13 A. No, I did not. 14:37:46

14 Q. Are you aware that Mr. Judy also testified 14:37:47
15 to placing telephone calls on behalf of multiple 14:37:49
16 entities in the credit card processing industry? 14:37:53

17 MR. SMITH: Objection; mischaracterizes the 14:37:56
18 evidence. 14:37:58

19 MR. ZANN: We can agree or disagree on it 14:37:59
20 because I think you're wrong, Taylor. 14:38:02

21 BY MR. ZANN:

22 Q. But, nonetheless, are you aware of that, 14:38:04
23 Mr. Heidarpour? 14:38:05

24 A. No, I'm not. 14:38:06

25 Q. So the reason I ask you that is just assume 14:38:08

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1 with me that that testimony is accurate; that Triumph 14:38:11
2 was placing telephone calls on behalf of five 14:38:15
3 different entities in the credit card processing 14:38:17
4 industry. That's why I posed the last question. If 14:38:20
5 your goal is to stop the telemarketers. And if it's 14:38:24
6 true that Triumph, as they testified under oath, is 14:38:27
7 placing calls on behalf of other entities in the 14:38:30
8 credit card processing industry, that your suit 14:38:34
9 against Total Merchant will not in and of itself stop 14:38:37
10 Triumph from engaging in calling activity? 14:38:40
11 MR. SMITH: Objection; asked and answered; 14:38:43
12 and calls for speculation. 14:38:44
13 THE WITNESS: Triumph, they did not 14:38:47
14 represent any other company when they called me or 14:38:50
15 they send me the e-mail. It was just Total Merchant 14:38:54
16 Services. 14:38:58
17 BY MR. ZANN: 14:38:58
18 Q. And how do you know who Triumph did or did 14:38:58
19 not represent at the time they called you? 14:39:00
20 A. I don't know. All I know is that when -- 14:39:03
21 when we were talking to them, they were representing 14:39:05
22 the TMS. When they sent the e-mail, they were 14:39:07
23 talking about TMS. 14:39:11
24 Q. But you just made a statement that Triumph 14:39:12
25 was not doing something. And I'm asking you what is 14:39:14

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1	A. No, sir.	15:22:42
2	Q. Are you aware of any control TMS exerted of	15:22:42
3	the business practices of Judy?	15:22:44
4	A. No, sir.	15:22:46
5	Q. And rounding this out, are you aware of any	15:22:47
6	control Triumph exhibited over the business practices	15:22:48
7	of Judy?	15:22:55
8	A. No.	15:22:56
9	Q. And are you aware of any authority TMS	15:22:56
10	provided Triumph to place telephone calls?	15:23:00
11	A. No. All I know is that they looked like	15:23:05
12	they had been working for them.	15:23:08
13	Q. But beyond those e-mails that you've reached	15:23:10
14	that conclusion, are you aware of any explicit	15:23:12
15	authority that TMS provided to Triumph to place	15:23:15
16	telephone calls?	15:23:18
17	A. No.	15:23:19
18	Q. Okay. And, similarly, are you aware of any	15:23:19
19	authority TMS provided to Judy to place telephone	15:23:22
20	calls?	15:23:25
21	A. No.	15:23:26
22	Q. And rounding this out, are you aware of any	15:23:26
23	authority Triumph -- sorry, are you aware of any	15:23:29
24	authority Triumph had over Judy to place telephone	15:23:32
25	calls?	15:23:37

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1 Q. How often? 15:31:28

2 A. We had many. 15:31:32

3 Q. Okay. And how would you define "many"? 15:31:34

4 A. Oh, last three, four years we have many. I 15:31:37

5 don't recall right now how many, but it was a 15:31:45

6 handful. 15:31:48

7 Q. Would you be surprised if I told you since 15:31:49

8 January of 2015 it was over 100 lawsuits that Abante 15:31:52

9 has filed? 15:31:57

10 A. No, it doesn't surprise me. 15:31:57

11 Q. And with that being said, of those over 100, 15:32:00

12 how many would you say Andrew represented Abante on? 15:32:04

13 A. That's what I'm saying is it was a handful; 15:32:08

14 not all of them. 15:32:10

15 Q. And why is Andrew not representing you in 15:32:12

16 this litigation? 15:32:16

17 A. I don't know. He had some other things to 15:32:17

18 do. I don't have any idea why he -- why he doesn't 15:32:20

19 do that. 15:32:23

20 Q. Well, I guess the question would be did 15:32:26

21 Abante seek to retain Andrew to retain its interests 15:32:29

22 in this lawsuit? 15:32:29

23 A. We talked -- we talked, and he helped me and 15:32:31

24 all of this stuff, but, no. 15:32:33

25 Q. And should this lawsuit result in a 15:32:36

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1 Q. Okay. So the award was 20,000 but you only 16:02:26
2 received 10,000 of the 20,000? 16:02:29

3 A. Right. Because the other -- I believe the 16:02:31
4 agreement that they had was something that -- they 16:02:34
5 went through bankruptcy or something they couldn't 16:02:38
6 pay it. 16:02:40

7 Q. No, I understand now. 16:02:42

8 Now, going down to the third -- I guess 16:02:44
9 we'll call it the third paragraph starting with, "If 16:02:49
10 no amount is recovered." 16:02:51

11 A. Yes. 16:02:54

12 Q. Do you see that language? 16:02:54

13 A. Yes. 16:02:55

14 Q. Do you interpret that language as meaning if 16:02:56
15 there is no recovery Abante will not be obligated to 16:02:58
16 make any payments to the attorneys? 16:03:02

17 A. Yes. 16:03:06

18 Q. And by "payments" that also includes the 16:03:07
19 attorney's fees as well as costs and expenses of the 16:03:09
20 litigation? 16:03:12

21 A. Right. 16:03:13

22 Q. So is it a fair statement that as of right 16:03:13
23 now, Abante has not paid any money to its attorneys 16:03:16
24 representing its interest in this litigation? 16:03:20

25 A. Right. 16:03:24

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1 Q. Approximately two weeks before the lawsuit 16:05:45
2 was filed on September 11th, 2019? 16:05:48
3 A. If you say that, yes. 16:05:51
4 Q. Well, I mean, I'm not the best at -- 16:05:53
5 A. I don't -- I don't have it in front of me, 16:05:56
6 but if you say that's the case, yes. 16:05:58
7 Q. This purports to be an eSignature; is that 16:06:00
8 correct? 16:06:04
9 A. Yes. 16:06:05
10 Q. Who placed this eSignature on the document? 16:06:06
11 A. What do you mean? I did it. 16:06:09
12 Q. You did it? 16:06:11
13 A. Yeah, I believe -- I don't know if it's a -- 16:06:13
14 whatever document that it was, I signed it on the -- 16:06:16
15 on the top, and then the name it says put it here. I 16:06:19
16 put it there. 16:06:23
17 Q. Okay. But that was my question. The 16:06:24
18 individual who actually signed it was yourself, 16:06:25
19 Mr. Heidarpour? 16:06:28
20 A. Yes. 16:06:30
21 Q. You can close the exhibit out. We're done 16:06:35
22 with that one. 16:06:37
23 Mr. Heidarpour, are you aware that a 16:06:38
24 mediation has already occurred in this litigation? 16:06:40
25 A. No. 16:06:44

1 Q. Okay. Okay. 16:06:44

2 A. I heard it -- I believe it was -- when was 16:06:46

3 it? Let me think for one second. I heard it but a 16:06:49

4 couple of cancellations or something that happened, 16:06:56

5 but I don't know the end -- what was in the end. 16:06:58

6 Q. And was there a reason why you were not 16:07:04

7 present at that mediation? 16:07:06

8 A. As I said, I believe it was a couple of the 16:07:07

9 dates -- as I said, my plan -- I'm part in 16:07:11

10 California, and I'm part in Arizona. And in last 16:07:15

11 October, November, December of last year I was in 16:07:19

12 Virginia. I think it was some kind of conflict of 16:07:22

13 the schedule. That's why it happened that I was not 16:07:26

14 there. 16:07:31

15 Q. Give me one minute just to check my topics 16:07:34

16 here. We might be done. Give me one second, 16:07:38

17 Mr. Heidarpour. 16:07:41

18 Mr. Heidarpour, what portion of Abante's 16:08:05

19 revenue is generated through TCPA litigation? 16:08:10

20 A. Less than 5 percent --

21 MR. SMITH: Object to --

22 THE WITNESS: Less than 5 percent, 7

23 percent, something like that.

24 THE REPORTER: I didn't hear your objection. 16:08:15

25 MR. SMITH: Just irrelevant. 16:08:15

EXHIBIT E



ABANTE ROOTER & PLUMBING
ATTN: FRED HEIDARPOUR
38560 N 101ST ST
SCOTTSDALE, AZ 85262-3097

Page: 1 of 30
Bill Cycle Date: 10/20/18 - 11/19/18
Account: 287260311186
Foundation Account: FAN 05808104
Invoice: 287260311186X11272018

Visit us online at: www.att.com/business

Wireless Statement

Bill-At-A-Glance

Previous Balance	\$718.58
Payment - 11/12 - Thank You!	\$718.58CR
Adjustments	\$0.00
Balance	\$0.00
New Charges	\$718.58

Amount to be Debited \$718.58

AutoPay will Debit Your Card by Dec 12, 2018

Service Summary

Service	Page	Total
Wireless	1	\$718.58
Total New Charges		\$718.58

Manage Your Account:

Online: att.com/myatt
Mobile App: att.com/myattapp
Support: 800 331-0500 or 611 from your mobile device
TTY: 866 241-6567



For Important Information about your bill, please see the **News You Can Use** section (Page 29).

Wireless

Wireless Summary

14 Wireless Telephone Numbers	Total Charges	Page
209 383-3803 AVANTE PLUMBING	27.36	3
510 351-5154 WIRELESS FORWARD	33.14	5
510 385-5520 FRED HEIDARPOUR	59.44	7
510 385-7447 FRED HEIDARPOUR	70.24	9
510 385-9645 FRED HEIDARPOUR	154.44	11
510 459-6147 ABANTE ROOTER & PLUMBING	36.35	13
510 534-1636 ABANTE ROOTER & PLUMBING	53.14	15
510 534-7590 ABANTE ROOTER & PLUMBING	33.14	17
510 540-7210 ABANTE ROOTER & PLUMBING	30.60	19
925 253-0106 ABANTE ROOTER	33.14	21
925 256-7511 ABANTE ROOTER	33.14	23
925 766-7255 FRANKLIN MARIN	59.44	25
925 828-1080 ABANTE ROOTER & PLUMBING	33.14	27
925 895-7551 ABANTE ROOTER & PLUMBING	61.87	29
Total	718.58	

Group 2 - Data Summary - Oct 20 thru Nov 19

AT&T Unlimited Plus Multi Line for Business - Includes unlimited domestic wireless data, talk and text on an eligible device. After 22GB of data usage, AT&T may slow speeds. Includes up to 10GB of tethering/line on an eligible device. After 10GB, tethering usage is slowed to max of 128 Kbps. Stream Saver included. Additional monthly access charge applies for each device. Eligible for \$10 auto-pay discount. Discount is applied within in 1 to 2 bill cycles. Other restrictions apply. See att.com/abs-additional-terms for plan details.

	Data Used (GB)
209 383-3803	0.00
510 385-5520	12.05
510 385-7447	1.26
510 385-9645	31.54
510 459-6147	2.20
510 540-7210	0.00
925 766-7255	7.63
925 895-7551	13.46
Total	68.12

Group 3 - Data Summary - Oct 20 thru Nov 19

Mobile Share Value 300MB with Rollover Data - Includes 300 megabytes with plan. Data Overage charge is \$20/300MB. Additional plan details available for Consumer customers at

Wireless Services provided by AT&T Mobility, LLC.

Printed on Recyclable Paper

Your Card will be Debited on or after: Dec 12, 2018

\$718.58



Account Number **287260311186**

ABANTE ROOTER & PLUMBING
ATTN: FRED HEIDARPOUR
38560 N 101ST ST
SCOTTSDALE, AZ 85262-3097

AT&T MOBILITY
PO Box 6463
Carol Stream, IL 60197-6463

**Exhibit
0013**

999002872603111860000000007185800000071858007

ABANTE000001

EXHIBIT F



fred poor <fredpour60@gmail.com>

Free Credit Card Terminal

2 messages

Aleks Meza <AMEZA@triumphmsp.com>
To: fred poor <fredpour60@gmail.com>

Tue, Oct 8, 2019 at 9:47 AM

Hello,

Thank you for taking the time to speak with me today and giving me the chance to earn your business. As we spoke about on the phone, we can set you up with a brand new Ingenico iCT220 for free with no out of pocket costs to you. The processing rate would be 0.5% and .10 cents per transaction.

The Ingenico iCT220 is a state of the art credit card processing machine that is EMV compliant and Apple Pay ready. Our equipment is plug and play ready so as soon as you receive it you can plug it in and start earning money. EMV will be required by October of 2015 to be in compliance with credit card industry regulations, and Apple Pay is currently one of the newest features for customers with iPhone to pay with.



Our Ingenico iCT220 has a service charge of \$5.00 per month to take care of account maintenance. This gives you access to 24/7 customer service and tech support to assure you can reach us when needed.

The fees are as follows:

0.5% Processing Rate

\$0.10 Cents per Transaction

\$5.00 Monthly Service Fee

\$0.25 Cents Batch out Fee

\$7.95 Monthly PCI Compliance Fee (Waived for the first year of service)

Free Equipment

Free Shipping

Free Activation

Next Day Funding

No Set up Fee

ABANTE000419

No Application Fee

Taking advantage of this promotion is very easy. You can call me back and I can take a brief five minute application over the phone.

<https://www.totalmerchantservices.com/>



Merchant Account Services - Best Credit Card Processing Company to Accept Credit Cards | Total Merchant Services

Setting Up a Merchant Account with Us Is Easy! Our merchant accounts enable you to accept credit cards and other payment types. Once you complete an application and your merchant account is approved, we'll send you equipment already programmed for your needs.

www.totalmerchantservices.com

Aleks Meza

Account Manager

2305 Historic Decatur Rd, Ste 100, San Diego CA
92106

Triumph Merchant Solutions

☎ (858) 225-4580 Ext.314 & Ext.100

✉ ameza@triumphmsp.com

Fax 1(888) 316-7994

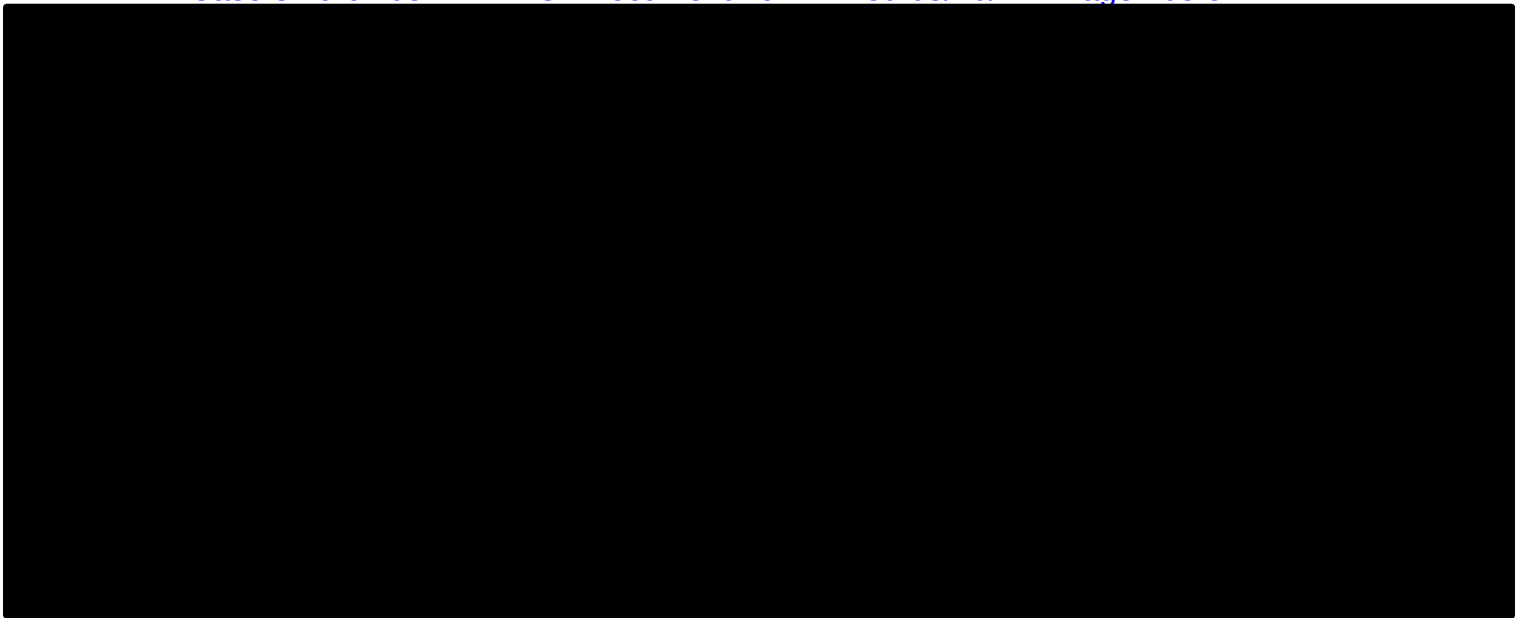
Office Hours: M - F 7:00 AM - 4:00 PM PST



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ABANTE000420



ABANTE000421



fred poor <fredpour60@gmail.com>

Free Credit Card Terminal

6 messages

Aleks Meza <AMEZA@triumphmsp.com>
To: "fredpour60@gmail.com" <fredpour60@gmail.com>

Mon, Jun 24, 2019 at 3:07 PM

Hello Sarday,

Thank you for taking the time to speak with me today and giving me the chance to earn your business. As we spoke about on the phone, we can set you up with a brand new wireless Ingenico iWL250 for free with no out of pocket costs to you. **The processing rate would be 0.5% and .10 cents per transaction.**

The Ingenico iWL250 is a state of the art credit card processing machine that is EMV compliant and Apple Pay ready. Our equipment is plug and play ready so as soon as you receive it you can plug it in charge it and once it is charged start earning money. EMV will be required by October of 2015 to be in compliance with credit card industry regulations, and Apple Pay is currently one of the newest features for customers with iPhone to pay with. With our wireless terminal you will not miss a payment as it has a sim card that allows it to pick up service anywhere in the United States.



Our Ingenico iWL250 has a **service charge of \$25 per month** to take care of account maintenance. This gives you access to 24/7 customer service and tech support to assure you can reach us when needed.

Free Equipment
Free Shipping
Free Activation
Next Day Funding
No Set up Fee
No Application Fee

For Example: \$100 transaction x 0.5% processing rate = 0.50 cents + 0.10 cents per transaction = 0.60 cents for every \$100 transaction that you do.

ABANTE000422

Taking advantage of this promotion is very easy. You can call me back and I can take a brief five minute application over the phone.

www.totalmerchantservices.com



Total Merchant Services - Merchant Account Services

Comprehensive Sales and Payment Processing Solutions. Since 1996, Total Merchant Services has helped 500,000+ businesses with their payment needs.

www.totalmerchantservices.com

Aleks Meza

Account Manager

2305 Historic Decatur Rd, Ste 100, San Diego CA
92106

Triumph Merchant Solutions

☎ (858) 225-4580 Ext.314 & Ext.100

✉ ameza@triumphmsp.com

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fred poor <fredpour60@gmail.com>
To: Aleks Meza <AMEZA@triumphmsp.com>

Mon, Jun 24, 2019 at 3:06 PM

I can not access the website. What is your website? can you give me a link.

[Quoted text hidden]

Aleks Meza <AMEZA@triumphmsp.com>
To: fred poor <fredpour60@gmail.com>

Mon, Jun 24, 2019 at 3:12 PM

ABANTE000423

Yes, it is <https://totalmerchantservices.com/>

Aleks Meza

Account Manager

2305 Historic Decatur Rd, Ste 100, San Diego CA
92106

Triumph Merchant Solutions

☎ (858) 225-4580 Ext.314 & Ext.100

✉ ameza@triumphmsp.com

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Please consider the environment before printing this email.

From: fred poor <fredpour60@gmail.com>

Sent: Monday, June 24, 2019 3:06 PM

To: Aleks Meza

Subject: Re: Free Credit Card Terminal

[Quoted text hidden]

Aleks Meza <AMEZA@triumphmsp.com>

To: fred poor <fredpour60@gmail.com>

Wed, Jun 26, 2019 at 9:42 AM

Good day Ms. Sarday,

I'm just following up with you today. Were you able to review the information that I sent you?

Tell me what you think about it. Do you think this would benefit your business?

Hope to hear from you soon!

Thank you and great day!

Aleks Meza

Account Manager

ABANTE000424

2305 Historic Decatur Rd, Ste 100, San Diego CA
92106

Triumph Merchant Solutions

☎ (858) 225-4580 Ext.314 & Ext.100

✉ ameza@triumphmsp.com

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From: fred poor <fredpour60@gmail.com>

Sent: Monday, June 24, 2019 3:06 PM

To: Aleks Meza

Subject: Re: Free Credit Card Terminal

[Quoted text hidden]

fred poor <fredpour60@gmail.com>

To: Aleks Meza <AMEZA@triumphmsp.com>

Wed, Jun 26, 2019 at 9:48 AM

Do not contact me.

[Quoted text hidden]

Aleks Meza <AMEZA@triumphmsp.com>

To: fred poor <fredpour60@gmail.com>

Wed, Jun 26, 2019 at 9:55 AM

Why is that? You're no longer interested? Or what can we do in order to earn your business?

Aleks Meza

Account Manager

2305 Historic Decatur Rd, Ste 100, San Diego CA
92106

Triumph Merchant Solutions

☎ (858) 225-4580 Ext.314 & Ext.100

✉ ameza@triumphmsp.com

Fax 1(888) 316-7994

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From: fred poor <fredpour60@gmail.com>

Sent: Wednesday, June 26, 2019 9:48 AM

[Quoted text hidden]

[Quoted text hidden]

ABANTE000426



fred poor <fredpour60@gmail.com>

Free Phone Swipe for Credit Cards

1 message

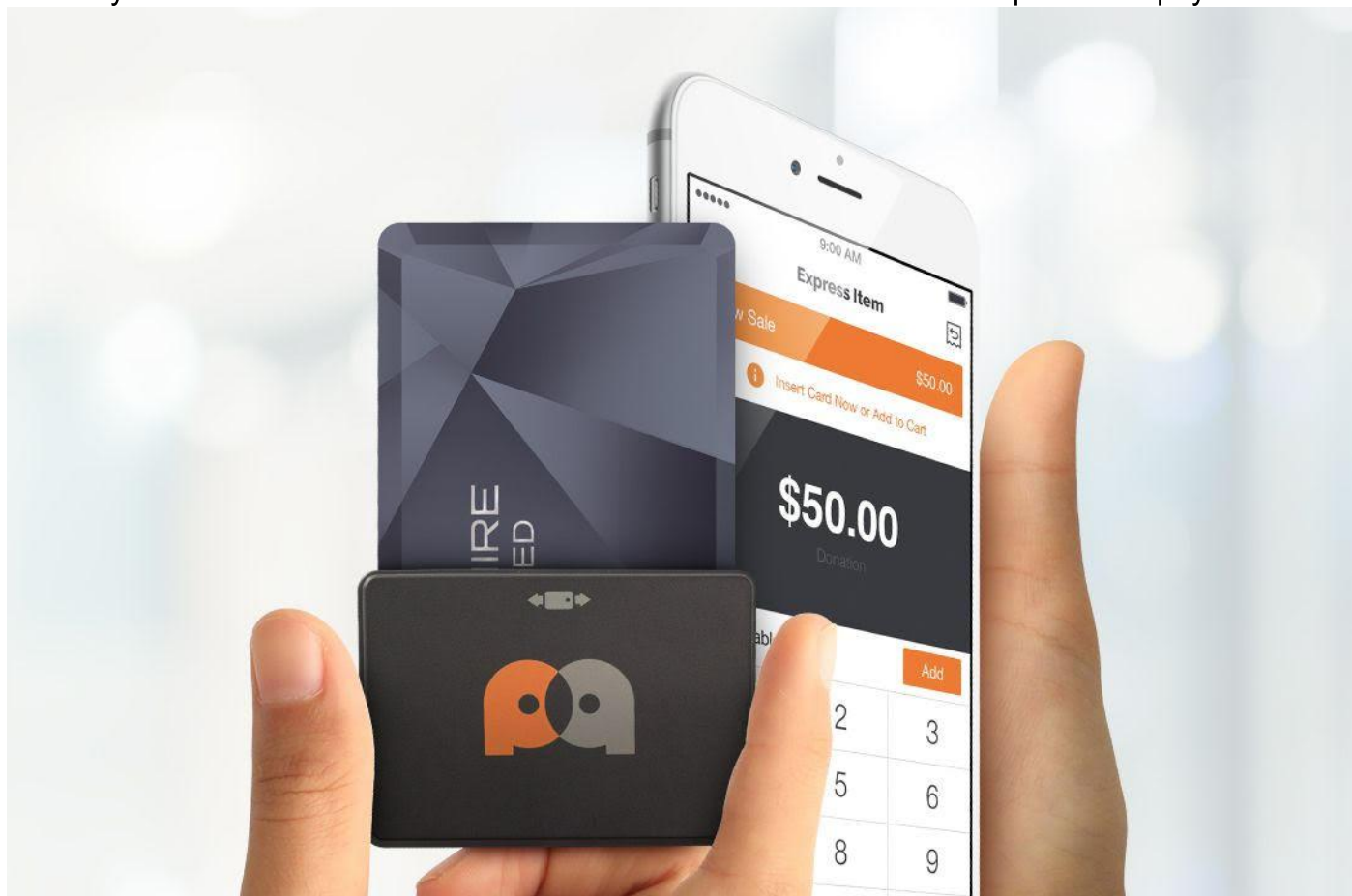
Aleks Meza <AMEZA@triumphmsp.com>
To: "fredpour60@gmail.com" <fredpour60@gmail.com>

Mon, Jun 24, 2019 at 3:11 PM

Hello Sarday,

Thank you for taking the time to speak with me today and giving me the chance to earn your business. As we spoke about on the phone, we can set you up with a brand new Pay Anywhere Phone Swipe for free with no out of pocket costs to you. The processing rate would be 0.5% rate and 0.10 cents per transaction.

The Pay Anywhere Phone Swipe is a state of the art credit card processing machine that is EMV compliant, Apple Pay & Google Wallet ready. Our equipment is plug and play ready so as soon as you receive it you can plug it in and start earning money. EMV will be required by October of 2015 to be in compliance with credit card industry regulations, and Apple Pay & Google Wallet is currently one of the newest features for customers with iPhones or Smart phones to pay with.



Our Pay Anywhere Phone Swipe has a **service charge of \$10 per month** to take care of account maintenance. This gives you access to 24/7 customer service and tech support to assure you can reach us when needed.

- Free Equipment

ABANTE000427

- Free Shipping
- Free Activation
- Next Day Funding Available
- NO Set Up Fees
- NO Application Fees

Taking advantage of this promotion is very easy. You can call me back and I can take a brief five minute application over the phone.

www.totalmerchantservices.com



Total Merchant Services - Merchant Account Services

Comprehensive Sales and Payment Processing Solutions. Since 1996, Total Merchant Services has helped 500,000+ businesses with their payment needs.

www.totalmerchantservices.com

Aleks Meza

Account Manager

2305 Historic Decatur Rd, Ste 100, San Diego CA
92106

Triumph Merchant Solutions

☎ (858) 225-4580 Ext.314 & Ext.100

✉ ameza@triumphmsp.com

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